



U.S. Department of Justice

Environment and Natural Resources Division

Environmental Enforcement Section
P.O. Box 7611
Washington, DC 20044-7611

Telephone (202) 305-0439
Facsimile (202) 514-4180

January 18, 2008

Thomas Dyer, State Director
Bureau of Land Management
Idaho State Office
1387 Vinnell Way
Boise, Idaho 83709

Re: Request for concurrence in Administrative Order on
Consent, Conda/Woodall Mountain Phosphate Mine

Dear Mr. Dyer:

This is to advise you that pursuant to section 4(b)(1) of Executive Order 12580 (January 23, 1987), as amended by Executive Order 13016 (August 28, 1996), the United States Department of Justice, Environment & Natural Resources Division, concurs in the attached Administrative Order on Consent with the J.R. Simplot Company regarding the performance of a Remedial Investigation/Feasibility Study ("RI/FS") at the Condall/Woodall Mountain Phosphate Mine, outside Soda Springs, Idaho.

Sincerely,

ELLEN M. MAHAN
Deputy Section Chief
Environmental Enforcement
Section

cc: Nathalie Smith, Esq. (DOI/Office of Solicitor/Portland)
Mark Nitcynski, Esq. (USDOJ-EDS)
Frederick Phillips, Esq. (USDOJ-EES)

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I. INTRODUCTION

1.1. This Consent Order ("CO")/Administrative Settlement Agreement and Order on Consent ("CO/AOC") is entered into voluntarily by the Idaho Department of Environmental Quality ("IDEQ"), the United States Environmental Protection Agency ("EPA"), the United States Department of the Interior (DOI), Bureau of Land Management ("BLM") pursuant to the authorities set forth in the July 17, 2000 Memorandum of Understanding Concerning Contamination from Phosphate Mining Operations in Southeastern Idaho ("MOU"), attached as Appendix 1, and the J.R. Simplot Company ("Simplot"), the latter as Respondent (collectively, the "Parties" or alone a "Party"). The mine site addressed in this CO/AOC is the Conda/Woodall Mountain Mine Site (the "Site"), located partly on public land and/or private lands that are subject to the jurisdiction, custody or control of IDEQ, Idaho Department of Lands ("IDL"), EPA, and/or BLM. A more detailed description of the Site is provided in Section IV of this CO/AOC ("Definitions").

1.2 As provided for in the MOU, the IDEQ has been designated as the "Lead Agency" for this Site. EPA will implement CERCLA at this Site and under this CO/AOC. The BLM, the United States Department of the Interior's Fish and Wildlife Service ("FWS"), and the Shoshone-Bannock Tribes ("Tribes") have elected to participate at the Site as Support Agencies.

1.3 BLM will exercise its CERCLA authority on lands at this Site subject to BLM's jurisdiction, custody or control. In exercising such authority, BLM will participate as a cooperating agency to EPA, which shall serve as CERCLA lead agency as set forth in Paragraph 2.1. EPA shall, as provided in the MOU, seek concurrence from BLM on Deliverables and otherwise coordinate with BLM as provided in that MOU. BLM shall also co-sign, with EPA, any final decision documents issued under this CO/AOC.

1.4 This CO/AOC provides for the performance by Simplot of a Remedial Investigation ("RI") and Feasibility Study ("FS") for the Site. In entering into this CO/AOC, the objectives of the Parties are: (a) to determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants at or from the Site, by conducting a remedial investigation; and (b) to determine and evaluate alternatives for remedial action (if any) to prevent, mitigate or otherwise respond to or remedy any release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site, by conducting a feasibility study; and (c) to recover response and oversight costs incurred by IDEQ, EPA, and DOI with respect to this CO/AOC. The Work required for performance of the RI and FS is specified in the Statement of Work ("SOW") attached, and incorporated by reference, as Appendix 2 to this CO/AOC, and is governed by Section IX of this CO/AOC ("Work to be Performed"). Data relevant to the RI/FS is available and may continue to be generated from work undertaken by Simplot in anticipation of performing the work required under this CO/AOC ("Work") and/or is available from work generated as part of the Area-Wide Investigation contemplated by the MOU and the Area Wide Investigation CO/AOC (July 20, 2001) ("AWAOC"), attached as Appendix 3, as well as from other sources. This CO/AOC is intended to be implemented consistently with the MOU and AWAOC. However, this Agreement does not create any rights in Simplot under the MOU.

1.5 The Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice has approved of and concurred in this agreement, in accordance with the requirements of Section 4 of Executive Order 12580.

II. JURISDICTION AND GENERAL PROVISIONS

2.1. The IDEQ has been designated as the "Lead Agency" for the purpose of routine project management, oversight, implementation, coordinating communication among the Parties, and serving as point of contact with Simplot. Pursuant to Paragraph 8.1, IDEQ has identified a Project Manager who shall act on behalf of the State. EPA will implement CERCLA at this Site and under this CO/AOC. Pursuant to Paragraph 8.3, EPA's designee for this Site shall have the authority vested in a "Remedial Project Manager" pursuant to CERCLA and the NCP. Where this CO/AOC cites IDEQ or its Project Manager as making a determination, or approval, or disapproval (collectively "decision"), or taking any action, that decision or action will be made or taken under State law. EPA will make decisions or take actions under CERCLA and communicate those decisions or actions to IDEQ. IDEQ will communicate in writing to Simplot both IDEQ and EPA's decisions and shall serve as a single point of contact between Simplot and the Agency parties to this CO/AOC. Disagreements between agencies will be resolved pursuant to the dispute resolution provision of Section E of the MOU. The BLM exercises jurisdiction, custody, and control over certain federally managed public lands and is responsible for the issuance of and administration of certain leases for mineral extraction on behalf of the United States. The Idaho Department of Lands is responsible for State mineral leases within the State of Idaho. Collectively, the governmental parties to this CO/AOC have jurisdiction over the Site.

2.2. This CO/AOC is entered into by IDEQ pursuant to Idaho's Environmental Protection & Health Act, Idaho Code §§ 39-101 to 39-130, the Hazardous Waste Management Act of Idaho, Idaho Code §§ 39-4401 to 39-4432, Idaho's Water Quality Act, Idaho Code §§ 39-3601 et seq., and the rules and standards promulgated pursuant thereto. This CO/AOC is entered into by EPA and the BLM under the authority vested in the President of the United States by

Sections 104, 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9604, 9607, 9622(a), and 9622(d)(3).

2.3. In accordance with Sections 104(b)(2) and 122(j)(1) of CERCLA, 42 USC §§ 9604(b)(2) and 9622(j)(1), EPA notified the natural resources trustees of negotiations with Simplot regarding the release of hazardous substances that may have resulted in injury to the natural resources under federal and state trusteeship.

2.4. The Parties recognize that this CO/AOC has been negotiated in good faith and that the actions taken by Respondent in accordance with this CO/AOC do not constitute an admission of liability. Without admitting any liability, Simplot agrees to the terms and conditions of this CO/AOC without the issuance of a Notice of Violation or the holding of a compliance conference under applicable Idaho law.

2.5. In any action to enforce the terms of this CO/AOC, the Parties agree not to contest its validity or the authority and jurisdiction of IDEQ, the BLM, FWS, or EPA to issue and enforce this CO/AOC consistent with Section XXVII (Enforcement), and the Parties agree to comply with and be bound by the terms and conditions of this CO/AOC. By signing this CO/AOC, however, Simplot does not concede or waive its right to object to the authority of the United States or IDEQ to issue, take, or enforce any other order or action relating to this Site.

III. PARTIES BOUND

3.1. This CO/AOC shall apply to, and be binding upon IDEQ, EPA, the BLM, and upon Simplot and its officers, employees, agents, successors and assigns. Any change in ownership or corporate status of Simplot including, but not limited to, any transfer of assets or real or personal property shall not alter Simplot's obligation to comply with the requirements

of this CO/AOC or to ensure compliance by any successor or assign of Simplot, regardless of whether Simplot continues to exist following such transaction. The signatories to the CO/AOC certify that they are authorized to execute and legally bind the Parties they represent to this CO/AOC.

3.2. Simplot shall provide a copy of this CO/AOC and all of its Appendices to each contractor, subcontractor, laboratory, and consultant retained to perform Work under the CO/AOC within fourteen (14) days after the effective date of this CO/AOC or the date of retaining their services, whichever is later, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this CO/AOC and its Appendices. Notwithstanding the provisions of any such contract, however, Simplot is, and shall remain, responsible for compliance with this CO/AOC.

IV. DEFINITIONS

4.1. Unless otherwise expressly provided herein, terms used in this CO/AOC that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this CO/AOC or in the attached Appendices, the following definitions shall apply:

“CO/AOC” shall mean this Consent Order/Administrative Settlement Agreement and Order on Consent, the Statement of Work (“SOW”), and all attached Appendices and all documents incorporated by reference into this document pursuant to Paragraph 9.7 of this CO/AOC including without limitation IDEQ and EPA approved submissions. IDEQ and EPA approved submissions (other than progress reports) are incorporated into and become part of the CO/AOC upon approval by IDEQ and EPA. In the event of a conflict between this CO/AOC and any Appendix, this CO/AOC shall control.

“BLM” shall mean the United States Department of the Interior, Bureau of Land Management.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

“Day” shall mean a calendar day unless expressly stated to be a working day. “Working day” shall mean a day other than Saturday, Sunday, or a Federal holiday. In computing any period of time under this CO/AOC, where the last day falls on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

“Deliverable” shall mean the documents Simplot is required to submit pursuant to this CO/AOC, the SOW, any approved work plans, and any additional documents identified in writing by IDEQ under Section XX (“Additional Investigation and Analysis”) of this CO/AOC. All Deliverables under this CO/AOC are subject to review, comment, and approval as described in Paragraph 9.87 of this CO/AOC.

“DOI” shall mean the United States Department of the Interior.

“Effective date of this CO/AOC” shall mean the later of the dates on which the CO/AOC has been signed by all Parties and concurred in by the United States Department of Justice.

“EPA” shall mean the United States Environmental Protection Agency.

“EPHA” shall mean the Idaho Environmental Protection & Health Act, Idaho Code §§ 39-101 to 39-130.

“Federal Agency” shall mean EPA, FWS, or BLM.

“Future Response Costs” shall mean all direct and indirect costs incurred after May 30, 2007 in connection with oversight and review of the Work performed under this CO/AOC as set forth and described in the SOW, including, but not limited to, time and travel costs associated

with oversight of the work performed under the SOW, contractor costs, compliance monitoring, including the collection and analysis of split samples; site visits; discussions regarding disputes that may arise under this CO/AOC, review and approval or disapproval of reports; and any other costs directly incurred in overseeing this CO/AOC.

“FWS” shall mean the United States Department of the Interior, Fish and Wildlife Service.

“Hazardous substances” shall include those substances defined under Idaho Code § 39-7203(3) and CERCLA Section 101(14), 42 U.S.C. § 9601(14) and shall also include “pollutants” as defined by Idaho Code § 39-3602(19) and IDAPA 58.01.02.003.87, “deleterious materials” as defined by IDAPA 58.01.02.003.22 and “hazardous material” as defined by IDAPA 58.01.02.003.48.

“HWMA” shall mean the Hazardous Waste Management Act of Idaho, Idaho Code §§ 39-4401 to 39-4432.

“Idaho’s Water Quality Act” shall mean Idaho Code §§ 39-3601 et seq.

“IDEQ” shall mean the State of Idaho Department of Environmental Quality.

“IDL” shall mean the Idaho Department of Lands.

“MOU” shall mean the July 2000 “Memorandum of Understanding Concerning Contamination from Phosphate Mining Operations in Southeastern Idaho” between several federal agencies (United States Forest Service, EPA, BLM, United States Department of the Interior, Bureau of Indian Affairs, (“BIA”) and FWS), IDEQ and the Shoshone-Bannock Tribes.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and codified at 40 C.F.R. Part 300, and amendments thereto.

“Natural Resource Damages” or “NRD” shall mean damages for harm to natural resources within the United States pursuant to common law, state statutory law, or federal statutory law, including CERCLA and the Clean Water Act, 33 U.S.C. §§ 1251 et seq.

“Past Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that EPA incurred at or in connection with the Site through May 30, 2007 plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such dates, which the parties have agreed is the amount of \$40,000.00.

“Site” shall mean the Conda/Woodall Mountain Mine approximately 8 miles northeast of Soda Springs, Idaho, including the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for response action implementation and materials handling. The Site occurs on State and private lands and on public lands administered by the BLM. The Site is further described on the map attached to this CO/AOC as Appendix 4, which is incorporated by reference into this CO/AOC.

“State” shall mean the State of Idaho, including its departments, agencies and instrumentalities.

“Statement of Work” or “SOW” shall mean the documents that outline the Work to be performed by Simplot to implement the Site investigation and to satisfy the requirements of this CO/AOC as set forth in Appendix 2 of this CO/AOC. The SOW is incorporated into this CO/AOC and is an enforceable part of this Order as are any modifications made thereto in accordance with Section XIX of this CO/AOC (“Emergency Response and Notification”).

“Support Agency” means an agency that provides a support agency coordinator or project manager to furnish necessary data to IDEQ, reviews response data and documents, and/or provides other assistance as requested by the Project Manager.

“Tribes” shall mean the Shoshone-Bannock Indian Tribes residing on the Fort Hall reservation near Pocatello, Idaho.

“United States” shall mean the United States of America, including its departments, agencies and instrumentalities.

“Work” shall mean all tasks that Simplot is required to perform pursuant to this CO/AOC, and its attached Appendices, and all Deliverables produced pursuant to this CO/AOC.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW BY IDEQ, EPA AND BLM

5.1. Findings of Fact. IDEQ, EPA, and BLM make the following Finds of Fact:

5.1.1. The Conda/Woodall Mine is located in Township 8 South, Range 42 East (Sections 2, 11-15, 22-27), Township 8 South, Range 43 East (Sections 30, 31) and Township 9 South, Range 43 East (Section 6) approximately 8 miles northeast of Soda Springs. Mining activities began at the Conda mine in 1906 with 23 association placer claims filed by the Southern California Orange Grove Fertilizer Company under patent numbers 548592, 548593, 548594, 555876, 555877 and 611957. Historic mining activities were conducted at the Site by Anaconda Copper Mining Company (approximately 1920-1959) and the Respondent (approximately 1960-1984). During the period from 1920 to 1959, the Conda town site, a mill, and an eight-mile rail line to Soda Springs were created. Underground mining ceased in 1956 but surface mining continued through 1984 on the patented lands and under Federal Phosphate lease I-04494 issued in 1954, and I-015523 issued in 1965.

5.1.2. The Conda/Woodall mine was the first mine in Idaho to operate under a federal mining lease. Mining activities disturbed a total of approximately 1445 acres of which approximately 421 acres have been reclaimed. The mine site, which also contained a Company-

owned town site, is inactive except for the slurry pipeline pump house operations and some limited ongoing reclamation activities.

5.1.3. Historic mining activities at the Site have included the construction of waste rock and overburden piles comprised of middle waste shales high in naturally occurring concentrations of selenium and other trace metals. Sampling results from the Area Wide Investigations performed since 1996 indicate elevated levels of associated constituents in waste rock soils, vegetation, surface water units and other various abiotic/biotic media at the Site. Several incidents of livestock deaths have been associated with grazing in the vicinity of the Site.

5.1.4. Selenium and other hazardous and deleterious substances have been detected above background concentrations in monitoring and sampling conducted at the Site by Simplot voluntarily in preliminary investigations. Subsequent sampling conducted by the IDEQ, BLM, the Idaho Mining Association, and their contractors indicate that selenium and other hazardous substances are being leached from waste rock at the Site into the environment, and may be impacting vegetation and surface water.

5.2. Conclusions of Law. Subject to Paragraph 6.1, and based on the Findings of Fact set forth above in Paragraphs 5.1.1.–5.1.4, and the Administrative Record supporting this RI/FS, the IDEQ, EPA, and BLM make the determinations in Paragraphs 5.2.1 through 5.2.9.

5.2.1. The Site is a “facility” as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

5.2.2. The contaminants found at the Site, including selenium and other hazardous substances, are “hazardous substances” as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and are “hazardous and deleterious materials” subject to the provisions of IDAPA 58.01.02.800, or are otherwise “pollutants” as defined by IDAPA 58.01.02.003.87.

5.2.3. There has been an actual or threatened "release," as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), of one or more hazardous substances from the facility.

5.2.4. There has been an actual discharge, as defined in IDAPA 58.01.02.003.25, of one or more pollutants or hazardous or deleterious materials from the facility to waters of the State of Idaho.

5.2.5. Simplot is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21) and IDAPA 58.01.02.003.83.

5.2.6. Simplot is liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), as a past and/or current owner and/or operator of the Site and/or as a person who arranged for the disposal of hazardous substances at the Site.

5.2.7. Simplot is liable to the State of Idaho under IDAPA 58.01.02.080.01.a-b. as a result of discharge to waters of the State of pollution and/or hazardous and deleterious materials.

5.2.8. The actual or threatened release of pollutants, hazardous substances and/or deleterious materials from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), or will otherwise injure designated beneficial uses of waters of the State within the meaning of IDAPA 58.01.02.080.01.b.

5.2.9. The Work approved under this CO/AOC is necessary to protect public health, welfare or the environment, will be consistent with CERCLA, the NCP, EPHA and HWMA and will expedite effective response actions, and is in the public interest.

VI. COLLATERAL USE OF THIS CO/AOC

6.1. Except as set forth in Paragraph 2.5, nothing in this CO/AOC shall constitute or be construed as an admission of liability or fact by any of the Parties. Specifically, Simplot does not admit the jurisdiction of, or any responsibility or liability, or the findings of fact, conclusions of law, or determinations made by, IDEQ, EPA, BLM set forth in this CO/AOC, and does not admit any responsibility or liability for any releases or threatened releases of pollutants, hazardous substances, and/or hazardous and deleterious materials from the Site. Moreover, Simplot does not acknowledge or concede that any release or threatened release of hazardous substances at or from the Site constitutes an imminent and substantial endangerment to the public health or welfare or the environment. The United States, including its agencies, and the IDEQ similarly do not admit any liability arising out of or relating to the Site or otherwise waive any provisions of the MOU relating to liability or jurisdiction.

6.2. None of the provisions of this CO/AOC shall be admissible in evidence in any proceeding, other than in a proceeding to enforce this CO/AOC or any judgment related to it, or for the purpose of demonstrating the consistency of the actions taken under this CO/AOC with the NCP and CERCLA, and/or any applicable provisions of the EPHA, HWMA, or Idaho's Water Quality Act.

VII. SETTLEMENT AGREEMENT AND ORDER

7.1. Based upon the foregoing provisions of this CO/AOC, and the Administrative Record for the Site, it is hereby ordered and agreed that Simplot shall comply with the provisions of this CO/AOC, including but not limited to all Appendices to this CO/AOC and documents incorporated by reference into this CO/AOC, and perform the actions required in this CO/AOC.

VIII. PROJECT MANAGER/COORDINATOR

8.1. IDEQ has been designated the Lead Agency for the Site as set forth in Paragraph 2.1. IDEQ, as the Lead Agency for the Site, will coordinate with EPA, and the Support Agencies pursuant to the MOU except to the extent a governmental party has declined Support Agency status. The United States Forest Service and the BIA have declined Support Agency status for the Site. The FWS, BLM, and the Tribes have accepted Support Agency status for the Site. IDEQ will appoint a Project Manager who shall act on behalf of the State. The initial Project Manager for the Site is:

Margaretha English
Idaho Department of Environmental Quality
1410 N. Hilton
Boise Idaho, 83706
Phone: 208-373-0271
FAX: 208-373- 0154
E-mail: margaretha.english@deq.idaho.gov

Simplot has designated as the Project Coordinator for the Site:

Alan L. Prouty
J.R. Simplot Company
P.O. Box 27, One Capital Center
999 Main Street, Ste 1300
Boise, Idaho 83707-0027
Phone: 208-389-7365
E-mail: alan.prouty@simplot.com

8.2. The Project Manager and the Project Coordinator shall be responsible for overseeing implementation of the Work and/or activities required at the Site under this CO/AOC. IDEQ and/or Simplot may change their respective Project Manager and Project Coordinator and shall notify each other in writing at least five (5) days prior to any such change.

8.3. One electronic copy of Deliverables shall be sent to each of the following persons.

Paper copies of Deliverables transmitted by one of the Parties under this CO/AOC shall be sent by regular or overnight mail or facsimile to the following persons:

For the IDEQ: one (1) copy to the Project Manager designated in Paragraph 8.1, and two (2) copies to

Doug Tanner
Waste and Remediation Manager
Idaho Department of Environmental Quality
444 Hospital Way #300
Pocatello, ID 83201
Phone: (208) 236-6160
Fax: (208) 236-6168
E-mail: douglas.tanner@deq.idaho.gov

For the BLM:

Jason Sturm
Environmental Protection Specialist
Bureau of Land Management
Pocatello Field Office
4350 South Cliffs Drive
Pocatello, ID 83204
Phone: (208)-478-6352
Fax: (208) 478-6376
e-mail: Jason_Sturm@blm.gov

For FWS:

Sandi Arena
US Fish and Wildlife Service
4425 Burley Drive, Suite A
Chubbuck, Idaho 83202
Phone: (208) 237-6975 Ext 34
Fax: (208) 237-8213
E-mail: sandi_arena@fws.gov

For EPA one copy to:

Fran Allans
1435 N. Orchard St.
Boise, Idaho 83706
Phone: (208) 378-5775
Fax: (208) 378-5744
E-mail: allans.fran@epa.gov

Consistent with Paragraph 2.1, the EPA designee above shall have the authority vested in an "On Scene Coordinator" and "Remedial Project Manager" pursuant to CERCLA and the NCP.

two copies to:

John Lincoln
CH2MHill
322 East Front Street, Suite 200
Boise, Idaho 83702-7329

one copy to:

Elizabeth McKenna
EPA Region 10
Office of Regional Counsel (ORC-158)
Seattle, WA 98118

For the Tribes:

Kelly Wright
Shoshone-Bannock Tribes
PO Box 306
Fort Hall, Idaho 83203
Phone: (208) 238-5372
Fax: (208) 237-0797
e-mail: kwright@shoshonebannocktribes.com

For IDL:

Allen Ruberry
Idaho Department of Lands
3563 Ririe Highway
Idaho Falls, Idaho 83401
Phone: 208-525-7167
Fax: 208-525-7178
e-mail: aruberry@idl.idaho.gov

For Simplot: the Project Coordinator designated in Paragraph 8.1.

8.4. The Project Manager shall have the authority vested in the Project Manager by the EPHA, the HWMA, and other applicable law. Absence of the Project Manager from the Site shall not be cause for stoppage of Work unless specifically directed by the Project Manager.

IX. WORK TO BE PERFORMED

9.1 Simplot agrees to perform an RI/FS at the Site, consistent with the attached SOW. Investigation and related activities have already been performed that may be relevant in completing the Work under the SOW, including but not limited to those activities performed in connection with the AWAOC and other activities performed by Simplot and various other public and private entities. The Parties intend that Work accomplished in accordance with this CO/AOC will be closely coordinated with the Area-Wide investigation, and shall not be performed in a duplicative or inconsistent manner. In addition, portions of the Conda/Woodall site remain or may become operating facilities subject to other regulatory programs. The Parties agree to use reasonable efforts to coordinate activities under this CO/AOC with existing and future operations to minimize interference between CO/AOC activities and operations activities.

9.2. The general objective of the RI is to determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants at or from the Site, and to assess risk to human health and the environment. The general objective of the FS for the Site is to identify and evaluate (based on treatability testing, where appropriate) alternatives for remedial action (if any) designed to prevent, mitigate, or otherwise respond to or remedy any release or threatened release of hazardous substances from the Site. The alternatives evaluated shall include, but shall not be limited to, the range of alternatives described in the NCP, and shall include remedial actions that utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. In evaluating the alternatives, Simplot shall address the factors required to be taken into account by Section 121 of CERCLA, 42 U.S.C. § 9621, and Section 300.430(e) of the NCP, 40 C.F.R. § 300.430(e). The

FS report as amended, and the administrative record, shall provide the basis for the proposed plan under CERCLA Sections 113(k) and 117(a), 42 U.S.C. §§ 9613(k) and 9617(a), by IDEQ and EPA, and shall document the development and analysis of remedial alternatives.

9.3. Simplot shall conduct activities and submit Deliverables as provided by the attached SOW, which is incorporated by reference, for the development of the RI/FS, and in accordance with the standards, specifications, and other requirements of the Work Plan and Sampling and Analysis Plan, as initially approved or modified, and as may be amended by the Project Manager. All such Work shall be conducted in accordance with CERCLA and the NCP, and EPA guidance including, but not limited to, the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" (OSWER Directive #9355.3-01), "Guidance for Data Useability in Risk Assessment" (OSWER Directive #9285.7-05) and guidances referenced therein, and guidances referenced in the SOW, as may be amended or modified by EPA. In addition, all work conducted shall be done in accordance with any applicable provisions of the EPHA, HWMA, and Idaho's Water Quality Act. Upon the written request of the Project Manager, Simplot shall provide the Project Manager with non-validated analytical data within thirty (30) days of receiving such data.

9.4. Selection of Contractors, Personnel. Work to be performed under this CO/AOC shall be under the direction and supervision of qualified personnel of Simplot or its consultants with experience in CERCLA investigations and response actions. Simplot shall notify the Project Manager of its qualifications or the name and qualifications of any contractors or subcontractors retained to perform the Work under this CO/AOC at least fifteen (15) days prior to commencement of such Work. IDEQ and EPA retain the right to disapprove of any of the contractors and/or subcontractors retained by Simplot, or of Simplot's choice of itself to do the

Work. The Project Manager shall provide a single notification from all agencies regarding approval or disapproval of contractors or subcontractors selected by Simplot. If the Project Manager issues a notification of disapproval of a selected contractor or Simplot's choice of itself, Simplot shall retain a different contractor or notify the Project Manager that Simplot will perform the Work in place of the disapproved contractor, within thirty (30) days following the Project Manager's notification of disapproval. Simplot shall notify the Project Manager of that contractor's name and the qualifications of the contractor or Simplot within that same time. If IDEQ and EPA subsequently disapprove of the replacement, IDEQ and EPA reserve the right to terminate this CO/AOC and to conduct a complete RI/FS, and to seek reimbursement for costs and penalties from Simplot. During the course of the RI/FS, Simplot shall notify the Project Manager in writing of any changes or additions in the personnel used to carry out such Work, providing their names, titles, and qualifications. IDEQ and EPA shall have the same right to disapprove changes and additions to personnel as they have regarding initial notification.

9.5. All samples analyzed shall be analyzed by a laboratory that participates in a Quality Assurance/Quality Control program equivalent to that specified in the guidance documents listed in the SOW.

9.6. The documents required under this CO/AOC to be prepared, submitted for approval, and implemented by Simplot shall be known as "Deliverables." For the purposes of this CO/AOC, Deliverables shall include the Draft and Final RI/FS Work Plan, the Draft and Final Sampling and Analysis Plan ("SAP"), the Draft RI Report, the Final RI Report, the Draft FS Report, and the Final FS Report for the Site and all other documents required by the SOW. These Deliverables are described more fully below:

9.6.1. RI/FS Work Plan. Simplot shall submit and implement a complete RI/FS

Work Plan that satisfies the SOW.

9.6.2. Sampling and Analysis Plans ("SAP"s). Simplot shall submit and implement a SAP for the Site that includes a site health and safety plan ("HASP"), quality assurance project plan("QAPP") and field sampling plan ("FSP") covering all Work under this CO/AOC. These plans shall be developed in accordance with the NCP, any applicable state regulations, and any applicable EPA guidance including EPA's current Standard Operating Safety Guides (EPA Publication 9285:1-03, PB92-963414, June 1992). In addition, the HASP shall comply with all applicable occupational safety and health regulations. Also, the FSP and QAPP for each Site will include procedures for collecting, transporting and analyzing all samples collected at the Site, as well as procedures for quality assurance/quality control ("QA/QC"). These procedures shall be consistent with 40 C.F.R. § 300.415(b)(4)(ii) and EPA Requirements for Quality Assurance Project Plans, EPA QA/G 5. The SAP shall identify laboratories to be used during performance of the Work of this CO/AOC.

9.6.3. RI Report. Simplot shall submit for review and approval an RI Report for the Site that documents the decisions and evaluations completed during the scoping. The RI Report shall be consistent with the SOW, work plans, and the sampling and analysis plan.

9.6.4. FS Report. Simplot shall submit a draft FS Report which reflects data collected during site characterization, the Site specific Remedial Action Objectives, ("RAO's"), and the results of the baseline human health and ecological risk assessments. The draft FS Report shall be in accordance with the SOW. The final FS Report and the administrative record, shall provide the basis for the Proposed Plan under CERCLA Sections 113(k) and 117(a), 42 U.S.C. §§ 9613(a) and 9617(k), by IDEQ and EPA and shall document the development and analysis of alternatives.

9.7. Approval of Plans and Other Submissions.

9.7.1. All Deliverables shall be submitted initially by Simplot in draft form, in accordance with the schedule provided in the SOW, or as otherwise established by the Project Manager, and are subject to review, comment, and written approval or disapproval. The Project Manager shall consolidate any comments received from IDEQ, EPA and the Support Agencies and provide a single set of comments to Simplot. Simplot shall provide a response to all comments by the Agency Parties, to the Project Manager in accordance with the schedule in the SOW. Approved Deliverables shall be enforceable as a part of this CO/AOC. All Work performed pursuant to this CO/AOC shall be in accordance with approved Deliverables, unless otherwise authorized in writing. Failure to materially comply with any provision of an approved Deliverable shall be considered a violation of this CO/AOC.

9.7.2. A Deliverable may also be approved with modifications, and subject to the dispute resolution provision of this CO/AOC, shall be enforceable as part of this CO/AOC. In the event Simplot disagrees with any decision made under this Paragraph, such disagreement shall be resolved under the dispute resolution provisions of this CO/AOC. Upon completion of the dispute resolution process under this CO/AOC, the Deliverable as modified and approved through the dispute resolution process shall be incorporated herein and shall be enforceable as part of this CO/AOC.

9.7.3. Resubmission. Simplot shall amend and submit a revised document to the Project Manager in accordance with the schedule in the SOW that incorporates all comments and corrects all deficiencies identified by the Project Manager, unless such comments have been revised or withdrawn in writing. Any stipulated penalties applicable to the submission shall accrue during the period specified in the SOW for resubmission by Simplot but shall not be

payable unless the resubmission is disapproved or modified due to a material defect.

9.7.3.1. Notwithstanding the receipt of a notice of disapproval, Simplot shall proceed to take any action required by any non-deficient portion of the submission, unless otherwise directed by the Project Manager. Implementation of any non-deficient portion of the submission shall not relieve Simplot of any liability for Stipulated Penalties.

9.7.3.2. Simplot shall not proceed further with any subsequent activities or tasks until receiving IDEQ and EPA approval, approval on condition or modification of the following deliverables: RI/FS Work Plan and Sampling and Analysis Plan, Draft Remedial Investigation Report and Treatability Testing Work Plan and Sampling and Analysis Plan and Draft Feasibility Study Report. While awaiting IDEQ and EPA approval, approval on condition, or modification of these deliverables, Respondents shall proceed with all other tasks and activities which may be conducted independently of these deliverables, in accordance with the schedule set forth under this CO/AOC.

9.7.3.3. For all remaining Deliverables not listed above in subparagraph 9.7.3.2, Simplot shall proceed with all subsequent tasks, activities and Deliverables without awaiting IDEQ and EPA approval on the submitted Deliverable. IDEQ and EPA reserve the right to stop Simplot from proceeding further, either temporarily or permanently, on any task, activity or Deliverable at any point during the RI/FS.

9.7.3.4. If IDEQ and EPA disapprove a resubmitted plan, report, or other Deliverable, or portion thereof, the Project Manager may again direct Simplot to correct the deficiencies. IDEQ and EPA shall also retain the right to modify or develop the plan, report or other Deliverable. Simplot shall implement any such plan, report or other Deliverable as corrected, modified, or developed by IDEQ and EPA, subject only to Simplot's right to invoke

the dispute resolution provisions of this CO/AOC.

9.8. The absence of written comments in response to the submission of any Deliverable by Simplot pursuant to the schedules set out under this SOW shall not be construed as approval of the Deliverable under this CO/AOC.

9.9. Unless the Project Manager authorizes a smaller number in writing, Simplot shall provide to the Project Manager an electronic copy and three (3) paper copies of each draft and final Deliverable, including one unbound copy and shall provide one paper copy to EPA and each Support Agency. Such copies shall be sent to the contacts listed in Paragraph 8.3 of this CO/AOC. All reports, maps and supporting information shall be provided in readily reproducible form.

9.10. IDEQ and EPA will jointly prepare a Community Relations Plan for the Site in accordance with applicable EPA guidance and the NCP. Simplot shall provide information and otherwise cooperate in support of the preparation and implementation of the Community Relations Plan.

9.11. Upon request by the Project Manager, Simplot shall provide copies of plans, task memoranda, field modifications, recommendations for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports and other documents generated in connection with the Work performed under this CO/AOC to EPA or a Support Agency.

X. ADMINISTRATIVE RECORD

10.1. In accordance with 40 CFR 300.800-825, IDEQ and EPA shall determine the contents and location of the administrative record for the Site and shall provide reasonable notice to Simplot of these contents and this location. Simplot may submit to the Project Manager for

consideration for inclusion in the record any records, reports, data, documents, photographs, or other information or materials prepared, discovered, relied on, or otherwise generated or used in connection with Simplot's performance of Work under this CO/AOC. However, nothing in this Paragraph shall be deemed to limit or affect the lawful discretion of IDEQ and EPA to determine the contents of the administrative record.

10.2. IDEQ and EPA retain the responsibility for the release to the public of the RI/FS report. IDEQ and EPA retain responsibility for the preparation and the release to the public of the Proposed Plan and Record of Decision in accordance with CERCLA and the NCP, and any applicable state law. The Project Manager shall provide Simplot with the final RI/FS report, Proposed Plan and Record of Decision. Nothing in this CO/AOC shall be deemed to obligate Simplot to perform or take any action pertaining to the selected remedial action.

10.3. Upon the request of the Project Manager in writing, Simplot shall submit to the Project Manager, upon submission of an RI/FS Report, any documents developed during the course of the RI/FS. Documents developed during the performance of the RI/FS include, but are not limited to, copies of plans, task memoranda, documentation of field modifications, recommendations for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports and other reports required pursuant to this AOC/CO. Simplot also shall submit any correspondence between Simplot and state, local, or federal authorities concerning performance of the RI/FS or the selection of remedy for the Site. Any claim that such materials may be privileged shall be governed by Paragraphs 17.4 and 17.5.

XI. OTHER APPLICABLE LAWS

11.1 All actions required to be taken pursuant to this CO/AOC shall be performed in accordance with the requirements of all applicable local, state, and federal laws and regulations,

except that, pursuant to Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. § 300.400(e), no Federal, State, or local permit shall be required for the portion of the Work conducted entirely on-Site, where such Work is carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621(e), and the NCP. Where any portion of the Work performed off-Site requires a federal or state permit or approval, Simplot shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

11.2 Compliance by Simplot with the terms of this CO/AOC shall not relieve Simplot of its obligation to comply with CERCLA, RCRA, EPHA, HWMA, or any other applicable local, state, or federal laws and regulations.

XII. RECORD PRESERVATION

12.1 The original or one copy of all records and documents in the possession, custody or control of Simplot, excluding internal drafts of Deliverables, that are generated or collected pursuant to this CO/AOC shall be preserved during performance of the Work and for a minimum of ten (10) years after completion of the Work required under this CO/AOC, unless the Project Manager notifies Simplot in writing that these documents may be destroyed earlier. After the expiration of this ten-year period, Simplot shall notify IDEQ and EPA at least sixty (60) days before the documents are scheduled to be destroyed and shall provide IDEQ and EPA with the opportunity to take possession of or copy non-privileged material. Such notice is only required for five (5) years following expiration of the ten-year post-completion period, unless extended by request of IDEQ or EPA in writing.

XIII. CLAIMS AGAINST THIRD PARTIES

13.1 The Parties to this CO/AOC reserve any claims they now have, or may have in the future, against any third party including, but not limited to, claims under Sections 107 and 113 of

CERCLA, 42 U.S.C. §§ 9607 and 9613, for recovery of response costs, including oversight or enforcement costs arising out of, or related to, this CO/AOC, and any future and/or past costs incurred in connection with the Site or this CO/AOC. Nothing in this CO/AOC shall constitute or be construed as a release from any claim, cause of action or demand against any person, firm, partnership, or corporation not a signatory to this CO/AOC for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances found at, taken to, or taken from the Site, or from the ownership or operation of the Site or any portion thereof.

XIV. THREATENED/ENDANGERED SPECIES/NATURAL RESOURCE DAMAGES

14.1 Simplot shall immediately notify the Project Manager of any and all threatened or endangered species encountered on the Site in the course of performing activities under this CO/AOC.

14.2 For the purposes of Section 113(g)(1) of CERCLA, 42 U.S.C. § 9613(g)(1), the Parties agree that, upon issuance of this CO/AOC, for performance of an RI/FS at the Site, remedial action under CERCLA shall be deemed to be scheduled and an action for damages (as defined in 42 U.S.C. § 9601(6)) must be commenced within three (3) years after completion of the remedial action.

XV. COUNTERPARTS AND EFFECTIVE DATE

15.1 This CO/AOC may be executed in counterparts, each of which shall be deemed to be an original, but such counterparts shall together constitute a single, integrated document. This CO/AOC shall be effective on the date it has been signed by all Parties and approved/concurred with by the United States Attorney General or his/her designee.

XVI. ACCESS

16.1 Beginning on the effective date of this CO/AOC, the BLM shall permit access to the portions of the Site located on federally managed land to Simplot and its authorized representatives, as necessary to perform the Work required under this CO/AOC. Simplot shall provide access for IDEQ, EPA, and Support Agency personnel accompanied or authorized by the Project Manager to the Site and to off-Site areas under the ownership and/or control of Simplot as may be needed to implement this CO/AOC, and shall provide access to all records and documentation related to the conditions at the Site and the actions conducted pursuant to this CO/AOC subject to the procedures described in Paragraphs 17.4 and 17.5 for documents which Simplot claims are privileged.

16.2 Simplot shall use its best efforts to obtain such access as may be needed, if any, to private lands not under its ownership and/or control that are necessary to perform the Work required under this CO/AOC. Simplot will use its best efforts to have any access agreement that it obtains include such access by IDEQ and EPA as may be necessary for IDEQ and EPA and their authorized representatives, and for Support Agency personnel accompanied or authorized by the Project Manager, to implement the terms of this CO/AOC, and shall specify that Simplot is not the representative of any governmental agencies for purposes of liability associated with Site activities. Simplot shall provide the Project Manager with copies of all relevant access agreements prior to initiation of field activities on the area covered by the access agreement. To the extent that Simplot is unable to obtain consensual access to any private lands, the appropriate governmental agencies may exercise their authorities to obtain necessary access. All persons with access to the Site under this Paragraph shall be required to comply with the approved health

and safety plans of that Site as well as any other health and safety requirements of the Mine Safety and Health Act, 30 U.S.C.A. Ch. 22, applicable to the Site; provided that the Federal Agencies may elect, at their discretion, to adopt their own health and safety plan applicable to federal employees and their contractors. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of an access agreement, and/or access easement,

XVII. SAMPLING/ DATA AVAILABILITY/ACCESS TO INFORMATION

17.1 Simplot shall notify the Project Manager at least five (5) working days prior to conducting field events, including construction, excavation, drilling and sampling events. The five-day notice period may be shortened if the Parties agree that this notice period would impede or prevent necessary or desirable sampling. Any Party, including its contractors, that is taking samples, will, at the request of another Party, allow split or duplicate samples to be taken by or for the other Party of any samples collected in the course of implementing this CO/AOC.

17.2 Simplot waives any objection to the validity and admissibility of any data generated in the course of performance of Work under this CO/AOC, if such data has been collected or generated in compliance with this CO/AOC, and validated in accordance with the QA/QC procedures set forth in the SAP. The Parties do not waive their rights to object to the relevance or the interpretation of, or the conclusions to be drawn from, such validated data.

17.3 All results of sampling, tests, modeling or other data (including raw data) generated by Simplot, or on Simplot's behalf, during implementation of this CO/AOC, shall be submitted to the Project Manager, upon request, in the subsequent progress report as described in the SOW. The Project Manager will make available to Simplot validated data generated by IDEQ and EPA unless it is exempt from disclosure by any federal or state law or regulation.

Simplot shall provide to IDEQ and EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this CO/AOC subject to the remaining provisions of Section XVII.

17.4 Simplot agrees not to assert any business confidentiality claim, or attorney-client or attorney work product privilege, with respect to any analytical data relating to sampling, monitoring, or other activities required to be performed under this CO/AOC, or with respect to observations of conditions at or resulting from releases at the Site made or generated in the course of the performance of the Work pursuant to this CO/AOC. Simplot may assert a claim of business confidentiality or other privilege covering any other type of information generated pursuant to the requirements of this CO/AOC, provided, in the case of a business confidentiality claim only, that such claim is consistent with the language of Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and is asserted in the manner described in 40 C.F.R. § 2.203. If no claim of confidentiality or other privilege accompanies the information when it is received by the Project Manager, it may be made available to the public without further notice. Disclosure of such information to and by IDEQ shall be governed by the provisions of Paragraphs 17.4-17.5 and the Idaho Public Records Act, Idaho Code § 9-342.

17.5 Simplot may assert that certain documents or information are privileged under the attorney-client privilege or any other privilege recognized by state and/or federal law. If Simplot asserts such a privilege, it shall inform the Project Manager of that decision and provide the Project Manager with the date, author, recipient(s), title, and description of the document or information withheld. Simplot shall also identify which privilege(s) it asserts applies to the document or information withheld and explain the basis for its assertion. Based on the

information supplied by Simplot, IDEQ and EPA shall determine whether to accept Simplot's claim of privilege. In the event IDEQ and EPA disagree with Simplot's claim of privilege, Simplot shall promptly disclose the document or information previously withheld, unless Simplot disputes the determination by invoking the dispute resolution provisions of Section XXI of this CO/AOC. However, no documents, reports or other information created or generated pursuant to the requirements of this CO/AOC shall be withheld on the grounds that they are privileged.

17.6 IDEQ, EPA and their authorized representatives, and Support Agency personnel accompanied or authorized by the Project Manager, shall have the authority at all reasonable times to inspect activities at the Site and conduct such tests on the Site as deemed necessary and may use cameras, sound recording devices, or any other equipment needed to verify data submitted or monitor activities undertaken by Simplot. Nothing in this Paragraph shall affect the authority of DOI under the Federal Land Policy and Management Act, the Mineral Leasing Act, or other applicable laws to inspect lands within its jurisdiction at the Site or conduct such tests on such lands as are deemed necessary. Simplot may request split or duplicate samples under Paragraph 17.1 of this CO/AOC and, upon request, shall also be entitled to inspect and make copies of any test results, recordings, photographs, or other non-privileged information or materials generated during or as a result of the inspection conducted by IDEQ or EPA. Subject to the provisions in Paragraph 17.4 or 17.5 of this CO/AOC, IDEQ, EPA and their authorized representatives, and the Support Agencies and their authorized representatives accompanied or authorized by the Project Manager shall be allowed to inspect and make copies of all records, operating logs, contracts, files, photographs, sampling and monitoring data, or any other non-privileged documents related to the Work required under this CO/AOC. Any claim that such

materials may be privileged shall be governed by Paragraphs 17.4 and 17.5 of this CO/AOC. Nothing herein is intended to limit or to expand in any way the right of entry or inspection authority of IDEQ or EPA or the Support Agency under CERCLA or any other applicable legal authority.

XVIII. WORK STOPPAGE

18.1 The Project Manager will communicate IDEQ and/or EPA's determination to stop Work from proceeding, either temporarily or permanently, on any task, activity or Deliverable at any point during performance of the Work required under this CO/AOC if Simplot materially fails to comply with the terms of this CO/AOC; provided, however, that the Project Manager must provide Simplot with written notice to stop Work and its reasons for doing so, unless the Project Manager communicates that an imminent and substantial endangerment to human health, welfare or the environment exists at the Site, such that written notice is impracticable.

XIX. EMERGENCY RESPONSE AND NOTIFICATION

19.1 If any incident, or change in Site conditions, during the Work conducted by Simplot pursuant to this CO/AOC on the Site, causes or threatens to cause an endangerment to the public health, welfare, or the environment, Simplot shall immediately notify the Project Manager of the incident or Site conditions. If the Project Manager is unavailable, Simplot shall notify the EPA Region 10, Emergency Response and Site Cleanup Unit, 24 Hour Duty Officer, (206) 553-1263. If, in the course of Simplot's performance of the Work under this CO/AOC on the Site, IDEQ and/or EPA determine there is an imminent and substantial endangerment to human health, welfare or the environment due to unanticipated or changed circumstances at the Site, in addition to EPA's authorities in the NCP, the Project Manager shall notify Simplot in writing of modifications to the Work Plan and Specifications, and/or the Deliverables that IDEQ

and EPA deem necessary to address the immediate threat. Within five (5) working days of the receipt of such notification, Simplot shall notify the Project Manager in writing whether it agrees to perform the work required under the proposed modifications. If the IDEQ, EPA and Simplot agree in writing to the proposed modification to the Work Plan and/or the new Deliverables, the modifications to the Work Plan and Specifications and/or the new Deliverables shall become an attachment to this CO/AOC and incorporated herein. In the event of an imminent and substantial endangerment to human health, welfare or the environment due to unanticipated or changed circumstances at the Site, modifications to the work plans may also be made orally by the Project Manager and shall be memorialized in writing within ten (10) days; provided, however, that the modification effective date shall be the date of the Project Manager's oral direction.

19.2 If Simplot does not agree to perform the Work required by the proposed modifications, IDEQ or EPA may perform the proposed Work or take any action deemed necessary under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and/or applicable state law and may seek recovery of any costs it incurs performing such proposed Work pursuant to applicable law. The Parties agree that any determination by the Project Manager or EPA that an immediate response at the Site is required shall not be subject to the dispute resolution provisions in Section XXI of this CO/AOC.

19.3 Nothing in this CO/AOC shall be deemed to grant, limit or affect any authority of any agency of the United States or the State of Idaho, under any statute or agreement other than this CO/AOC and the MOU, to take, direct, or order any or all appropriate action to protect human health, welfare or the environment.

XX. ADDITIONAL INVESTIGATION AND ANALYSIS

20.1 If IDEQ and EPA determine that additional Work on the Site is required to meet

the objectives of this CO/AOC and that work is not covered by Section IX above, the Project Manager may notify Simplot in writing of such determination and specify any proposed changes to any Deliverable to reflect the additional Work. Subject to its rights pursuant to Section XXI to invoke dispute resolution, Simplot agrees to conduct this additional Work pursuant to this CO/AOC. Within ten (10) working days of receipt of the written determination that additional Work is required, Simplot shall confirm its willingness to perform the additional Work by providing notification to the Project Manager or invoke dispute resolution. The SOW and/or RI/FS Work Plan shall be modified to incorporate additional Work, or in accordance with the final resolution of the dispute. IDEQ and EPA reserve the right to conduct the Work itself at any point, to seek reimbursement from Simplot, and/or to seek any other appropriate relief.

20.2 Simplot may implement certain additional Work or modifications to the Work based on a verbal agreement between the Project Manager and the Project Coordinator; however, in such cases, written confirmation of that agreement shall be transmitted between the Project Manager and Project Coordinator within ten (10) days of such agreement. Within fifteen (15) days of its notice of agreement to the Project Manager, Simplot shall submit to the Project Manager a revised Work Plan or other appropriate Deliverable describing and providing a schedule for performance of the additional Work. If IDEQ, EPA, and Simplot agree in writing to the revisions to the Work Plan and/or the new Deliverable, the revised Work Plan and/or the new Deliverable shall become an attachment to this CO/AOC and incorporated herein. Simplot shall perform all agreed upon additional tasks, including providing any additional analytical results and reports as required by the revised Work Plan and/or the new Deliverable. IDEQ and/or EPA reserve the right to perform the work or take any action deemed necessary under applicable law, and may seek recovery of any costs incurred performing such work pursuant to applicable law.

20.3 If prior to the completion of the Work Plans, IDEQ and EPA determine that sufficient data has been collected with respect to a particular position or issue then the Project Manager may communicate a decision to accelerate the RI Report and FS process or undertake a removal action with respect to that particular portion or issue. IDEQ and EPA's election to undertake this approach may result in an Engineering Evaluation and Cost Assessment ("EE/CA") and an FS, the combination of which will address all pathways for the release or threatened release of hazardous substances at the Site. Simplot will complete the initial FS on the schedule provided in the SOW. Simplot will complete the subsequent FSs or EE/CA's on a schedule provided in a revised FS or EE/CA Work Plan.

XXI. DISPUTE RESOLUTION

21.1 The dispute resolution procedures in this Section are the exclusive mechanism for resolving disputes arising under this CO/AOC. A dispute shall be considered to have arisen when Simplot serves the Project Manager with a written Notice of Dispute. A Notice of Dispute shall be served by facsimile, overnight mail, or some equivalent service. The Project Manager will forward the Notice of Dispute to all governmental Parties who shall thereafter determine which agency shall be the reviewing agency for purposes of the particular dispute. The Project Manager will notify Simplot which agency shall be the reviewing agency within ten (10) days of receipt of the Notice of Dispute.

21.2 In the first instance, the disputing parties shall attempt to resolve any dispute arising under this CO/AOC by informal negotiations. The period for informal negotiations shall not exceed thirty (30) days from the date of receipt of the Notice of Dispute, unless the reviewing agency and Simplot agree in writing to modify the period for informal negotiations. If the disputing Parties fail to resolve the dispute informally, the formal dispute resolution procedure in

the following Paragraphs shall apply.

21.3 In the event the disputing Parties cannot resolve the dispute through informal negotiations, then the position of the reviewing agency shall be binding unless, within seven (7) days after the conclusion of the informal negotiations period, Simplot invokes the formal dispute resolution procedures of this Section by serving on the reviewing agency a written Statement of Position on the matter in dispute. Simplot's written Statement of Position shall be sent by facsimile, overnight mail, or some equivalent service, and shall define the dispute and state the basis of Simplot's objections to the position of the reviewing agency.

21.4 Following receipt of Simplot's Statement of Position, the reviewing agency shall send its written statement of position to Simplot by facsimile, overnight mail or some equivalent service.

21.5 Following this exchange of Statements of Position, the appropriate supervisory office of the reviewing agency shall make a final determination resolving the matter in dispute. The appropriate supervisory office for IDEQ is the Director of the Department of Environmental Quality. The appropriate supervisory office for EPA is the Director of the Environmental Cleanup Office. The appropriate supervisory office for BLM is the Idaho State Director. The appropriate supervisory office for FWS (disputes over FWS costs) is the Field Supervisor, Eastern Idaho Field Office.

21.6 Any decision made by IDEQ pursuant to this Section shall not constitute a final agency action subject to judicial review unless and until IDEQ commences a judicial action to enforce this CO/AOC, in which case any challenge to a final determination shall be subject to the Idaho Administrative Procedures Act, Idaho Code § 67-5273. Any determination by a Federal Agency pursuant to this Section is governed by Section 113(h) and (j) of CERCLA 42 U.S.C. §

9613(h) and (j), and shall not constitute a final agency action subject to judicial review unless and until the United States commences a judicial action to enforce this CO/AOC, in which case the determination shall only be reviewable in Federal court.

21.7 Nothing in this AOC precludes the parties from agreeing to use other forms of alternative dispute resolution in lieu of the procedures described in Paragraphs 21.3 – 21.5.

21.8 Upon completion of all dispute resolution procedures under this Section, Simplot shall proceed in accordance with the final determination regarding the matter in dispute. If Simplot does not perform any required Work in accordance with the final determination, IDEQ or EPA may perform the Work and/or pursue any other appropriate relief, including judicial enforcement of this CO/AOC pursuant to applicable law.

21.9 The invocation of the dispute resolution provisions of this CO/AOC shall not extend, postpone or affect in any way any unrelated obligation of Simplot under this CO/AOC not directly in dispute, unless the Parties agree in writing otherwise. Stipulated penalties with respect to any disputed matter shall accrue from the first day of noncompliance with any applicable provision of the CO/AOC and shall continue to accrue for the duration of the dispute resolution process, but payment of the penalties shall be stayed pending resolution of the dispute. In the event Simplot does not prevail on the disputed matter, stipulated penalties shall be assessed and paid as provided in Section XXV, unless otherwise agreed by the Parties in writing.

XXII. FORCE MAJEURE

22.1 Delays or inability to perform any of the requirements of the CO/AOC within the time limits prescribed shall not be a violation of the CO/AOC where performance is prevented or delayed by a *force majeure* event. *Force majeure* is defined as any event arising from causes beyond the control of Simplot, of any entity controlled by Simplot, or of Simplot's contractors,

that delays or prevents performance of any obligation under this CO/AOC, despite Simplot's best efforts to fulfill the obligation. *Force majeure* does not include the financial inability of Simplot to complete performance of the obligation or increased cost of performance. Simplot shall have the burden of proving *force majeure* by a preponderance of the evidence.

22.2 If any event occurs that may materially delay performance of any obligation under this CO/AOC or submittal of any Deliverable past the applicable deadline, Simplot shall notify the Project Manager within twenty-four (24) hours of the time Simplot knew or should have known that the event would delay such performance or submittal. Within five (5) business days thereafter, Simplot shall notify the Project Manager in writing of the reasons for the delay, its anticipated length, measures taken or to be taken to minimize the delay, and an estimated timetable for implementation of these measures. Failure to comply with these requirements shall waive any claim of *force majeure* by Simplot.

22.3 The Project Manager shall notify Simplot in writing of the determination by IDEQ and EPA as to whether *force majeure* applies to the event or circumstances within seven (7) days, or upon notice, such additional time IDEQ and EPA reasonably needs to respond, after receipt of written notice from Simplot. If IDEQ and EPA determines that the delay has been or will be caused by circumstances constituting a *force majeure*, the due date for each uncompleted task in this CO/AOC shall be extended for a sufficient period to complete the tasks that were delayed or prevented. Such period shall be at least equal to the delay resulting from the *force majeure* circumstance. If the Project Manager notifies Simplot that IDEQ and/or EPA disagree with Simplot's *force majeure* claim, or disagreement on the length of an extension of time, the dispute shall be resolved in accordance with the dispute resolution provisions in Section XXI of this CO/AOC or the stipulated penalties provisions of Section XXV, as appropriate.

XXIII. REIMBURSEMENT OF STATE COSTS

23.1 Reasonable Costs incurred by IDEQ with respect to the Site under this CO/AOC will be reimbursed in the following manner:

23.1.1. As an initial deposit, Simplot will pay the sum of Ten Thousand Dollars (\$10,000.00) to be deposited to an account established for this Site.

23.1.2. Thereafter, IDEQ shall provide a quarterly accounting and invoice to Simplot of Costs incurred by IDEQ in relation to this CO/AOC. "Costs" subject to reimbursement under this Paragraph shall mean all direct or indirect costs incurred by IDEQ after January 28, 2002 in connection with IDEQ's support of Work performed by or on behalf of IDEQ under this CO/AOC, as set forth and described in the SOW or for work performed prior to this CO/AOC but used in support thereof, including but not limited to: reasonable time and travel costs associated with oversight of the Work performed under the SOW; IDEQ's contractor costs; compliance monitoring, including the collection and analysis of split samples; Site visits; review and approval or disapproval of reports; reasonable overhead charges and any other costs directly or indirectly incurred in overseeing this CO/AOC.

23.1.3. Within thirty (30) days of Simplot's receipt of IDEQ's quarterly accounting invoice, Simplot shall reimburse the State for all costs reflected in the accounting invoice.

23.1.4. The initial deposit will be returned to Simplot within sixty (60) days of the date IDEQ incurs final response costs.

23.2 All payments necessary to IDEQ shall be made to:

Administrative Services-Accounts Receivable
Idaho Department of Environmental Quality

1410 N. Hilton
Boise, ID 83706-1255

23.3 Simplot may dispute payment of any portion of IDEQ's submitted costs, but only on the basis of accounting errors, the inclusion of costs outside the scope of this CO/AOC, the inclusion of costs inconsistent with State regulations or the inclusion of costs that have not been paid or approved for payment by IDEQ. Disputes regarding oversight costs will be resolved using the dispute resolution procedures described in Section XXI. Any objection by Simplot shall be made in writing within forty-five (45) days of receipt of the Quarterly Billing and shall specifically identify the disputed costs and the basis of the dispute. All undisputed costs shall be remitted by Simplot in accordance with the provisions in the preceding paragraphs of this Section. In any dispute resolution proceeding, Simplot shall bear the burden of establishing its contentions as to inappropriate costs. If IDEQ prevails in the dispute resolution proceeding, Simplot shall remit the amount(s) in question, including any applicable interest, within thirty (30) days after receipt of the final determination.

XXIV. REIMBURSEMENT OF EPA AND DOI COSTS

24.1 Payment of EPA Future Response Costs.

24.1.1. Within 30 days of the Effective Date of this CO/AOC, Simplot shall pay to EPA sixty thousand dollars (\$60,000.00) in prepayment of Future Response Costs. The total amount paid shall be deposited by EPA in the SE Idaho Selenium Conda/Woodall Site Special Account, within the EPA Hazardous Substance Superfund. These funds shall be retained and used by EPA to conduct or finance Future Response Costs subject to the provisions of Paragraph 24.1.4. Payment shall be made by Electronic Funds Transfer ("EFT"), in accordance with EFT instructions provided by EPA, or by submitting a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the

party making the payment, and the EPA Site/Spill ID Number _____. Simplot shall send the check to:

US Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
PO Box 979076
St. Louis, MO 63197-9000

24.1.2. At the time of payment, Simplot shall send notice that payment has been made to EPA to the Remedial Project Manager and to the Servicing Finance Office, EPA Finance Center, MS-NWD, Cincinnati, OH 45268.

24.1.3. Simplot shall reimburse EPA for all Future Response Costs associated with the Site not inconsistent with the NCP. On a periodic basis EPA will send Simplot a bill requiring payment that includes a SCORPIOS cost summary. Simplot shall make all payments within thirty (30) days of Simplot's receipt of each bill requiring payment. Simplot shall make all payments required by this Paragraph in the manner required by Subparagraph 24.1.1, with notice as required by Subparagraph 24.1.2. The total amount paid will be deposited by EPA in the SE Idaho Selenium Conda/Woodall Site Special Account within the EPA Hazardous Substance Superfund. These funds will be retained and used by EPA to conduct or finance Future Response Costs. Any amounts remaining in the SE Idaho Selenium Conda/Woodall Site Response Costs Special Account may be transferred by EPA to the EPA Hazardous Substance Superfund.

24.1.4. After IDEQ and EPA issue a written notification of completion of Work pursuant to Section XXXV and EPA has performed a final accounting of all direct and indirect costs relating to Future Response Costs, EPA shall apply any unused amount paid by Simplot pursuant to Subparagraphs 24.1.1 to any other unreimbursed response costs or response actions

remaining at the Site. Any surplus or unused monies paid pursuant to Subparagraph 24.1.1 will be remitted to Simplot.

24.2 Payment of EPA Past Response Costs

24.2.1. Within 30 days of the Effective Date of this CO/AOC, Simplot shall reimburse EPA the amount of Forty Thousand dollars (\$40,000) for all Past Response Costs associated with the Site. Payment of Past Response Costs shall be made by Simplot in accordance with the payment instructions in Subparagraph 24.1.1. The total amount to be paid by Simplot pursuant to this Subparagraph shall be deposited in the SE Idaho Selenium Conda/Woodall Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund consistent with the provision of paragraph 24.1.3.

24.3 Payment of Interest to EPA

24.3.1. For purposes of this Section, Interest shall accrue at the rate established under Section 107(a) of CERCLA, 42 U.S.C. § 9607. The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year and is compounded. In the event that payment for Future Response Costs or Past Response Costs is not made by the due dates specified in this CO/AOC, Simplot shall pay Interest on the unpaid balance. Interest on Past Costs shall begin to accrue on the Effective Date of this CO/AOC and shall continue to accrue until the date of payment. Interest on Future Response Costs paid in accordance with Paragraph 24.1.3, shall begin to accrue on the date of receipt of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to

the United States under this CO/AOC by virtue of Simplot's failure to make timely payments under this Section.

24.4. Payment of DOI Future Response Costs.

24.4.1. Simplot hereby agrees to commit the sum of up to sixty thousand dollars (\$60,000) per year to pay DOI's Future Response Costs. No later than December 1 of each year, DOI shall submit to Simplot an estimated annual Cost budget. Within thirty (30) days of receipt of the estimated annual budget, Simplot shall deposit with the DOI an amount equal to the estimated annual budget or \$60,000, whichever is less.

24.4.2. DOI shall use such monies to establish an account fund dedicated solely to its activities associated with this CO/AOC, in accordance with the Appropriations Act for the Department of the Interior and Related Agencies of 2000, Pub. L. 106-113, 113 Stat. 150, and other applicable statutes, regulations and guidance. Within 180 days of the execution of this CO/AOC, and every 180 days thereafter, the DOI shall provide Simplot an accounting of its costs, including supporting cost summaries.

24.4.3. Payments to DOI shall be made by certified or cashier's check made payable to the Central Hazardous Materials Fund (Conda) and mailed to:

Central Hazardous Materials Fund
NBC Division of Financial Management Services
Branch of Accounting Operations
Mail Stop D-2777
7401 West Mansfield Ave.
Lakewood, Colorado 80235

Each check shall reference:

Site Name: Southeast Idaho Phosphate Mining - Conda/Woodall Mountain Mine
CO/AOC

24.4.4. Within 120 days after completion of DOI support activities under this CO/AOC, DOI shall provide Simplot with a final cost accounting. In the event that the monies remain in the Fund, the DOI shall reimburse Simplot within thirty (30) days of submission of the final cost accounting.

24.4.5. In the event that full reimbursement of the DOI Future Response Costs is not paid by Simplot within thirty (30) days of Simplot's receipt of each cost estimate, as provided in Paragraph 24.4.1, Simplot shall be liable to pay stipulated penalties, as provided in this CO/AOC, and interest on the unpaid balance at a rate provided in Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4). Interest shall begin to accrue on the thirty first (31st) day after Simplot's receipt of the bill and shall continue to accrue until the date that full payment of the cost estimate is received by the CHF.

24.4.6. Within 120 days after completion of DOI support activities under this CO/AOC, DOI shall provide Simplot with a final cost accounting. In the event that the monies remain in the Fund, the DOI shall reimburse Simplot within thirty (30) days of submission of the final cost accounting.

24.5 Simplot may dispute payment of any portion of EPA's, and/or DOI's response costs, but only on the basis of accounting errors, ~~or~~ the inclusion of costs inconsistent with the NCP, or the inclusion of costs outside the scope of this CO/AOC. Disputes regarding EPA's or DOI's Response Costs will be resolved using the dispute resolution procedures described in Section XXI of this CO/AOC. Any objection by Simplot shall be made in writing within thirty (30) days of receipt of the billing statement and shall specifically identify the disputed costs and the basis of the dispute. Disputed costs shall be paid by Simplot into an interest-bearing escrow account while the dispute is pending. Simplot shall send to EPA's Project Manager and EPA's

Cincinnati Finance Center at the addresses provided in Paragraphs 8.3 and 24.1, a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. All undisputed costs shall be remitted by Simplot in accordance with the provisions in the preceding Paragraphs of this Section. In any dispute resolution proceeding, Simplot shall bear the burden of establishing an accounting error, the inclusion of costs inconsistent with the NCP, or the inclusion of costs for work outside the scope of this CO/AOC. If EPA or DOI prevails in the dispute resolution proceeding, Simplot shall remit the amount(s) in question, including any applicable interest, within 30 days after receipt of the final determination. If Simplot prevails concerning any aspect of the contested costs, Simplot shall pay that portion of the costs for which it did not prevail in the manner described in the preceding sentence. Simplot shall be disbursed any balance of the escrow account.

XXV. STIPULATED PENALTIES

25.1 Unless there has been a written modification of a compliance date or other requirement of this CO/AOC by the Project Manager, or a *force majeure* event as defined herein, in the event Simplot fails to meet any requirement of this CO/AOC, Simplot shall pay stipulated penalties in the amount of \$1,000 per day, per violation for the 1st through 14th days of noncompliance; \$3,000 per day, per violation for the 15th through 30th day of noncompliance; and \$7,500 per day, per violation for the 31st day of noncompliance and every day thereafter. Compliance by Simplot shall include complete and timely performance of each activity required under this CO/AOC including but not limited to reimbursement of response costs pursuant to

Section XXIII and XXIV, or complete and timely performance of all Work or any activities described in any plan, statement or Deliverable approved under this CO/AOC.

25.2 All penalties shall begin to accrue on the day after complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission of a Deliverable under Section IX (Work to be Performed), during the period, if any, beginning on the 31st day after the Project Manager's receipt of such submission until the date that the Project Manager notifies Simplot of any deficiency, and (2) with respect to a matter subject to Dispute Resolution (Section XXI), during the period, if any, beginning on the 31st day after the Negotiation Period begins until the date that the reviewing agency issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of the CO/AOC.

25.3 The Project Manager will advise Simplot in writing of any stipulated penalties owed by Simplot pursuant to this Section. All penalties shall be paid by certified or cashier's check within thirty (30) days of the date of receipt of the demand for payment, unless Simplot has properly disputed such demand or related notice of violation. Interest shall begin to accrue on the unpaid balance at the end of the thirty (30) day period. Interest shall accrue at the rate provided in applicable law. Payment shall be made in accordance with instructions provided by the Project Manager.

25.4 The stipulated penalties provided for in this Section of the CO/AOC shall be the exclusive monetary penalty for violations of this CO/AOC. The provisions in this Section, however, do not preclude IDEQ or EPA from pursuing any other remedies or sanctions that may be available by reason of Simplot's failure to comply with any of the requirements of this

CO/AOC, nor shall payment of stipulated penalties relieve Simplot of the responsibility to comply with any requirement of this CO/AOC. Notwithstanding any other provision of this Section, IDEQ or EPA may at any time and in its unreviewable discretion, waive any portion of the stipulated penalties owed to IDEQ or EPA that have accrued pursuant to this CO/AOC.

XXVI. OTHER CLAIMS

26.1 By entering into this CO/AOC, the Parties assume no liability for injuries or damages to persons or property resulting from any acts or omissions of any other Party. No Party shall be deemed to be a Party to any contract entered into by any other Party or its contractors to carry out actions pursuant to this CO/AOC.

XXVII. ENFORCEMENT

27.1 Except for the provisions of Section XXI of this CO/AOC related to EPA and DOI cost recovery and as provided in this Paragraph 27.1 below, responsibility for enforcement of the CO/AOC shall be vested in IDEQ as Lead Agency. Determinations regarding compliance with the terms of the CO/AOC and related enforcement actions shall be made by the Lead Agency consistent with the provisions of Paragraph 2.1 and subject to dispute review provisions set forth in Section XXI of this CO/AOC. Notwithstanding the foregoing, however, the EPA and BLM specifically reserve the right to bring an action to enforce this CO/AOC in circumstances where EPA or BLM determines that IDEQ as Lead Agency has failed to take or is unable to take and/or pursue enforcement action. Furthermore, as provided in Section XXX of this CO/AOC ("Reservation of Rights"), EPA and the Support Agencies reserve the right to exercise their separate, statutory and regulatory enforcement authorities with respect to the Site.

XXVIII. COVENANT NOT TO SUE BY IDEQ AND THE UNITED STATES

28.1 In consideration of the actions that will be performed and the payments that will

be made by Simplot under the terms of this CO/AOC, and except as otherwise specifically provided in this CO/AOC, the United States and the State of Idaho covenant not to sue or take administrative action against Simplot pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work performed under this CO/AOC and for recovery of Past Response Costs and Future Response Costs that are reimbursed by Simplot pursuant to this CO/AOC. This covenant not to sue shall take effect upon receipt by EPA of the Past Response Costs due under Section XXIV ("Reimbursement of EPA DOI Response Costs") of this CO/AOC. This covenant not to sue is conditioned upon the complete and satisfactory performance by Simplot of its obligations under this CO/AOC, including, but not limited to, payment of Future Response Costs. This covenant not to sue extends only to Simplot and does not extend to any other person.

28.2 This CO/AOC requires the performance of an RI/FS but does not itself require Simplot to undertake actions to remediate or clean up contamination. As such this CO/AOC does not constitute a final remedy for contamination or pollution, if any, resulting from the matters addressed herein. IDEQ expressly reserves the right to seek further relief to address contamination or pollution resulting from the matters addressed herein. Nothing herein shall be deemed to bar such further relief and this CO/AOC shall not operate pursuant to Idaho Code 39-108(3)(a)(v) or Idaho Code § 39-4413(1)(d) to preclude the IDEQ from seeking additional relief.

XXIX. COVENANT NOT TO SUE BY SIMPLOT

29.1 Except as provided in section XXX, "Reservation of Rights," Simplot covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Past Response Costs or Future Response Costs, or this CO/AOC, including, but not limited to:

29.1.1. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

29.1.2. any claim arising out of the Work or arising out of the response actions for which the Past Response Costs, or Future Response Costs have or will be incurred, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or;

29.2 Simplot further covenants not to sue and agrees not to assert any claim against EPA pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. § 9607 and 9613, relating to the Work or payment of Past Response Costs or Future Response Costs.

XXX. RESERVATION OF RIGHTS

30.1 Except as expressly provided in this CO/AOC, the State of Idaho and the United States reserve all rights, claims and defenses each may have, including the right to bring an action against Simplot under Section 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, or Idaho Code §§39-108(3)(a)(v) and 39-4413(A)(1)(d), for recovery of any unreimbursed response costs incurred in connection with the Site. Nothing in this CO/AOC shall be construed as releasing Simplot from liability, if any, for its actions. The State of Idaho and the United States reserve the right to take any enforcement action pursuant to CERCLA or any other legal authority for relief, including, but not limited to, injunctive relief, monetary penalties, and punitive damages for any violation of this CO/AOC, except as provided in Paragraph 27.1. The State of Idaho, IDEQ and the United States reserve all rights against Simplot with respect to liability for performance of response action other than the Work and for response costs other

than those to be reimbursed by Simplot pursuant to this CO/AOC; criminal liability, liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site. The IDEQ expressly reserves the right to seek further relief to address contamination or pollution resulting from the matters addressed herein. Nothing herein shall be deemed to bar such further relief and this agreement shall not operate pursuant to Idaho Code 39-108(3)(a)(v) to preclude the IDEQ from seeking additional relief.

30.2 Nothing in this CO/AOC shall be construed as releasing the United States or any of its agencies or departments from any liability for any of its actions. Simplot also reserves any defense that may be asserted by law in response to any enforcement action taken by the United States with respect to the Site.

30.3 Simplot reserves, and this CO/AOC is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for damages caused, in whole or in part by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. 2671; nor shall such claim include a claim based on EPA's selection of response actions, or the oversight or approval of Simplot's plans or

activities. The foregoing applies only to claims brought pursuant to statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

30.4 Nothing in this CO/AOC shall be construed to limit the power and authority of IDEQ, EPA, or appropriate Support Agencies to take, direct, or order all actions necessary to protect the public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances at or from the Site, as permitted under applicable law.

30.5 Except as expressly provided in this CO/AOC, Simplot reserves all rights, claims and defenses it may have, including the right to bring an action against the United States, the State of Idaho and/or their agencies and departments under CERCLA for recovery of any response costs incurred in connection with the Site under CERCLA. Nothing in this CO/AOC shall be construed as releasing the United States or the State of Idaho from any liability for any of its actions. Simplot also reserves any defense that may be asserted by law in response to any enforcement action taken pursuant to the United States' or IDEQ's reservation of rights in this Section.

30.6 Simplot reserves, and this CO/AOC is without prejudice to, claims against IDEQ, subject to the provisions of the Idaho Code, respectively, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of IDEQ while acting within the scope of his/her office or employment under circumstances where IDEQ, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a state employee; nor shall any such claim include a

claim based on IDEQ's selection of response actions, or the oversight or approval of Simplot's plans or activities.

30.7 Work Takeover. In the event IDEQ and/or EPA determine that Simplot has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, IDEQ and EPA may assume the performance of all or of any portion of the Work as IDEQ and EPA determine necessary. Simplot may invoke the dispute resolution procedures set forth in Section XXI of this CO/AOC to dispute IDEQ and EPA's determination that takeover of the Work is warranted. Costs incurred by IDEQ and EPA in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Simplot shall pay pursuant to Section XXIII ("Reimbursement of State Response Costs") and Section XXIV (Reimbursement of EPA and DOI Response Costs"). Notwithstanding any other provision of this CO/AOC, IDEQ and EPA retain all authority and reserve all rights to take any and all response actions authorized by law.

XXXI. CONTRIBUTION PROTECTION

31.1 The Parties agree that this CO/AOC constitutes an administrative settlement for purposes of Section 113(f) of CERCLA, 42 U.S.C. § 9613(f), and that Simplot is entitled, as of the Effective Date of this CO/AOC, to protection from contribution actions or claims as provided by Sections 113(f) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f) and 9622(h)(4), for "matters addressed" in this CO/AOC. The "matters addressed" in this CO/AOC are the Work, Past Response Costs, and Future Response Costs. Nothing in this CO/AOC precludes the Parties from asserting any claims, causes of action, or demands against any person not parties to this CO/AOC for indemnification, contribution, or cost recovery.

XXXII. INDEMNIFICATION

32.1 Simplot agrees to indemnify and hold the State of Idaho and the United States and their agencies, departments, agents and employees, harmless from all claims of third parties arising from acts or omissions of Simplot or those acting on its behalf, including its officers, employees, agents, contractors, subcontractors, or assigns, in carrying out activities under this CO/AOC.

32.2 Subject to the limitations and procedures of the Idaho Tort Claims Act, Idaho Code § 6-901-29, IDEQ agrees to indemnify Simplot and its agents and employees from all claims of third parties arising from acts or omissions of the IDEQ or those acting on its behalf, including its officers, employees, agents, contractors, subcontractors, or assigns, in carrying out activities under this CO/AOC to the extent that such a claim could be made against IDEQ under the Idaho Tort Claims Act, Idaho Code § 6-901-29.

32.3 In performing any of the Work required by this CO/AOC, Simplot has an affirmative duty to protect from injury and damage lands of the United States. Damage includes, but is not limited to, fire suppression costs and all costs and damages associated with restoration or rehabilitation of natural resources associated with Simplot's implementation of this CO/AOC. Simplot shall be liable for damage to all roads and trails of the United States caused by the use of Simplot, or those acting on its behalf, except that damage shall not include reasonable and ordinary wear and tear.

XXXIII. FINANCIAL ASSURANCE AND INSURANCE

33.1 Within thirty (30) days of the Effective Date of this CO/AOC, Simplot shall establish and maintain financial security in the amount of \$1.5 million in one or more of the following forms:

33.1.1 A surety bond guaranteeing performance of the Work;

33.1.2 One or more irrevocable letters of credit equaling the total estimated cost of the Work;

33.1.3 A trust agreement establishing a trust fund containing the estimated cost of the Work with terms and conditions acceptable to the EPA and IDEQ.

33.1.4 A written guarantee to perform the Work executed in favor of the EPA and IDEQ by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with Simplot, provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of the EPA and IDEQ that it satisfies the financial test requirement of 40 C.F.R. § 264.143(f) with respect to the estimated cost of the Work and must also comply with the requirements of the following Paragraph 33.2; or

33.1.5 A demonstration that Simplot satisfies the requirements of 40 C.F.R. § 264.143(f).

33.2 If Simplot seeks to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to the preceding Paragraph 33.1.4 of this CO/AOC, Simplot shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. § 264.143(f). If Simplot seeks to demonstrate its ability to complete the Work by means of the financial test or the corporate guarantee pursuant to the preceding Paragraph 33.1.5 it shall resubmit sworn statements conveying the information required by 40 C.F.R. § 264.143(f) annually, on the anniversary of the Effective Date.

33.3 In the event that the EPA and IDEQ, after a reasonable opportunity for review and comment, determines at any time that the financial assurances provided pursuant to this Section

are inadequate, Simplot shall, within thirty (30) days of receipt of notice of the EPA and IDEQ's determination, obtain and present to the EPA and IDEQ for approval one of the other forms of financial assurance listed in the preceding Paragraph 33.1 of this CO/AOC. Simplot's inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this CO/AOC.

33.4 If Simplot can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 33.1 above, Simplot may, on any anniversary date of the Effective Date of this CO/AOC, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining work to be performed. Simplot shall submit a proposal for such reduction to the EPA and IDEQ, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by the EPA and IDEQ. In the event of a dispute, Simplot may reduce the amount of the security in accordance with the final administrative or judicial decision resolving the dispute.

33.5 Simplot may change the form of financial assurance provided under this Section at any time, upon notice to and approval by the EPA and IDEQ, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, Simplot may change the form of the financial assurance only in accordance with the final administrative or judicial decision resolving the dispute.

33.6 No later than fifteen (15) days before commencing any on-site Work, Simplot shall secure, and shall maintain until the first anniversary of completion of all activities required under this CO/AOC comprehensive general liability insurance with limits of \$1,000,000, combined single limit, and automobile liability insurance with limits of \$1,000,000, combined single limit,

naming the United States and the State as additional insureds. In addition, for the duration of this CO/AOC, Simplot shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Simplot in furtherance of this CO/AOC. Prior to commencement of the Work under this CO/AOC, Simplot shall provide to the EPA and the State certificates of such insurance and a copy of each insurance policy. Simplot shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Simplot demonstrates by evidence satisfactory to the United States and the State that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Simplot need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XXXIV. INTEGRATION/APPENDICES

34.1 This CO/AOC and its appendices and any Deliverables, technical memoranda, specifications, schedules, documents, plans, reports (other than progress reports), etc. that will be developed pursuant to this CO/AOC and become incorporated into and enforceable under this CO/AOC constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this CO/AOC. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this CO/AOC. The following appendices are attached to and incorporated into this CO/AOC:

Appendix 1	MOU
Appendix 2	SOW
Appendix 3	AWOC
Appendix 4	Site Map

XXXV. NOTICE OF COMPLETION

35.1 Upon completion of all requirements under this CO/AOC, Simplot shall certify in writing to the Project Manager that all requirements under this CO/AOC, including any additional Work and payment of stipulated penalties, have been completed. The certification shall be signed by a representative of Simplot with the requisite knowledge and authority, and shall include the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete." If IDEQ and EPA agree with Simplot's certification the Project Manager will so notify Simplot in writing and this CO/AOC, with the exception of any continuing obligations, shall be terminated, with respect to all or a portion of the Site that has been certified. For the purposes of this Section, continuing obligations shall include, but not be limited to, the following obligations contained in this CO/AOC: Section XII ("Record Preservation"), Section XXVIII ("Reservation of Rights") and Section XXX ("Indemnification"). If IDEQ or EPA determines that any requirements of this CO/AOC have not been completed by Simplot, the Project Manager will notify Simplot in writing consistent with Paragraph 2.1 and specify the deficiencies. Simplot shall correct such deficiencies in accordance with the notice from the Project Manager. Failure by Simplot to correct such deficiencies shall be a violation of this CO/AOC.

XXXVI. MODIFICATION

36.1 Minor field modifications may be made orally by the Project Manager and shall be memorialized in writing within ten (10) days; provided, however, that the modification effective date shall be the date of the Project Manager's oral direction. Modification to any plan or schedule may be made by EPA and IDEQ and communicated, in writing, by the Project

Manager or at the Project Manager's direction. Any other requirements of this CO/AOC may be modified in writing by mutual agreement of the Parties. In the event Simplot disagrees with any modification proposed under this Paragraph, such disagreement shall be resolved in accordance with the dispute resolution provisions of Section XXI.


XXXVII. MISCELLANEOUS

37.1 During the performance of this CO/AOC, Simplot agrees that in connection with the performance of Work under this CO/AOC, Simplot shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age or handicap. Simplot shall include and require compliance with the above nondiscrimination provision in any contract or subcontract made with respect to this CO/AOC. IDEQ shall have the right to enforce the foregoing nondiscrimination provisions by suit for specific performance or any other remedy under the laws of the United States or the state in which the breach or violation occurs.

37.2 If, while implementing the terms of this CO/AOC, Simplot discovers any objects of historic or scientific interest, it shall notify the Project Manager and leave such discoveries intact until and unless otherwise instructed by the Project Manager. For the purposes of this paragraph, objects of historic or scientific interest include, but are not limited to, historic or prehistoric ruins, fossils, or artifacts. Compliance with any protective and mitigative measures specified by the Project Manager shall be Simplot's responsibility.

Simplot Conda/Woodall Mountain Mine Site
Consent Order/Administrative Order on Consent

J.R. Simplot Company

By: 

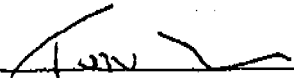
Name: Terry Uhling

Title: Senior Vice President, Secretary, and General Counsel

Date: September 24, 2007

Simplot Conda/Woodall Mountain Mine Site
Consent Order/Administrative Order on Consent

IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY

By: 

Name: Toni Hardesty
Title: Director, Idaho Department of Environmental Quality

Date: 9/24/07

Simplot/Conda/Woodall Mountain Mine Site
Consent Order/Administrative Order on Consent

U.S. Department of the Interior

By: David L. Bernhardt

Name: David L. Bernhardt

Title: Solicitor

Date: 10/18/2007

Simplot Conda/Woodall Mountain Mine Site
Consent Order/Administrative Order on Consent

United States Environmental Protection Agency
Region 10.

By: Howard Orlean

Name: Howard Orlean

Title: Program Manager

Date: 9/27/07

Simplot Conda/Woodall Mountain Mine Site
Consent Order/Administrative Order on Consent

COPY

United States Department of Interior, Bureau of Land Management,
Idaho State Director

By:

Name:

Title:

Date:

Thomas H. Syer
Thomas H. Syer
State Director
10/22/07

MEMORANDUM OF UNDERSTANDING
between
USDA-FOREST SERVICE REGION 4,
ENVIRONMENTAL PROTECTION AGENCY REGION 10,
USDOI (BUREAU OF LAND MANAGEMENT,
BUREAU OF INDIAN AFFAIRS, AND FISH AND WILDLIFE SERVICE),
THE SHOSHONE-BANNOCK TRIBES, and
STATE OF IDAHO DIVISION OF ENVIRONMENTAL QUALITY
concerning
CONTAMINATION FROM PHOSPHATE MINING OPERATIONS
IN SOUTHEASTERN IDAHO

PARTIES:

This Memorandum of Understanding (MOU) is entered into by and between the following governmental entities (Parties):

- The United States Department of Agriculture, Forest Service (Forest Service)
- The United States Environmental Protection Agency (EPA)
- The United States Department of Interior, Bureau of Land Management (BLM)
- The United States Department of Interior, Bureau of Indian Affairs (BIA)
- The United States Department of Interior, Fish and Wildlife Service (USFWS)
- The State of Idaho, Department of Health and Welfare, Division of Environmental Quality (IDEQ)
- The Shoshone-Bannock Tribes (Tribes)

The FS and BLM are hereafter collectively referred to as the "Federal Land Management Agencies." The FS, EPA, BLM, BIA and USFWS are hereafter collectively referred to as the "Federal Agencies."

For purposes of this MOU the Parties designate the individuals identified in Appendix A or their successors as general contacts for issues relating to this MOU

RECITALS

- A. Elevated concentrations of selenium and other hazardous substances, pollutants and contaminants have been identified in water, soil, and vegetation associated with current or former phosphate mining operations in southeastern Idaho.
- B. The approximate extent of currently known past and present phosphate mining operations is indicated on the map attached hereto as Exhibit 1 (the "Mining Area"), and includes areas located variously on federal land, tribal land, private land, state land, or a mixture of these types of ownership or jurisdictional areas. Individual phosphate mining operations located within the Mining Area are listed in Exhibit 1. The Parties reserve the right to amend Exhibit 1 as necessary upon mutual agreement in light of information received or developed pursuant to this MOU.
- C. A number of the Federal Agencies already have incurred and will incur costs in responding to the release and threat of release of hazardous substances in the Mining Area. It is anticipated that all the Parties eventually will incur such costs during the pendency of this MOU.
- D. The Federal Agencies have referred matters subject to this MOU to the U.S. Department of Justice ("DOJ") Environmental Enforcement Division for possible litigation and/or concurrences that may be required by Executive Order 12580, as well as for assistance in negotiations.
- E. Phosphate Mine Owners and Operators in the Mining Area ("Companies") may be liable for performing response actions and/or for response costs incurred and to be incurred by the "Parties" in responding to releases or threatened releases of hazardous substances within the Mining Area, and/or for natural resource damages.
- F. In July 1998, the Forest Service negotiated an Administrative Order on Consent ("AOC") with one of the Companies for completion of a Site Investigation ("SI") and an engineering evaluation/cost analysis (EE/CA) at South Maybe Canyon.

STATEMENT OF PURPOSE:

- G. The Parties acknowledge their overlapping authorities and interests in this matter and the complexity of mixed-ownership and jurisdictional issues in the Mining Area. The Parties intend in this MOU to provide a framework for the coordination of their actions and authorities to:

- 1) Ascertain the overall extent of the contamination present in and around historic and ongoing phosphate mining operations in the Mining Area;
 - 2) Define specific sites for focused investigation and response action;
 - 3) Establish overall priorities for the investigation and response action process in order to protect human health and the environment;
 - 4) Undertake investigations and response actions in a manner that will allow the Parties to recover response costs.
 - 5) Promote future mining operating practices that will safeguard the environment from future contamination; and
 - 6) Negotiate agreements or enter into contracts consistent with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., and the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. Part 300, under which the Companies or contractors hired by one of the parties to this MOU will undertake appropriate investigation and response actions in connection with selenium and other contamination within the Mining Area ("Agreements").
- H. The Parties agree that they will work together to integrate procedures and substantive requirements for these various tasks under their respective asserted authorities, and to resolve any conflicts among them, in order to minimize duplication of efforts and assure effective and efficient response actions.
- I. The Parties also will work together in the exercise of their respective authorities in the Mining Area, to ensure compliance with applicable federal, state, local and tribal laws, including but not limited to the legal authorities listed for each Party in Appendix B hereto.
- J. The Parties similarly will work together in the exercise of their respective authorities in the Mining Area, and in accordance with the provisions of CERCLA and the NCP, to preserve their respective rights and interests concerning potential natural resource damage claims arising from injuries to natural resources in the Mining Area.
- K. The Parties also agree that it is important to communicate a single set of instructions to the Companies following consultation among themselves, and it

is important to develop and adhere to an agreed-upon communications plan in connection with their efforts under this MOU.

- L. This MOU is an agreement between the Federal Agencies, the State and the Tribes, and is not intended to control the relationship among the Federal Agencies.

AUTHORITIES:

- M. Each party asserts it has authority to enter into this Agreement and to respond to releases of hazardous substances within the Mining Area, as set forth in the Statement of Legal Authority attached hereto as Appendix B and incorporated as part of this MOU. By entering into this MOU, the Parties do not waive any of their respective authorities or concede authorities or jurisdiction asserted by other Parties. Nothing in this MOU shall be construed to restrict, enlarge, or otherwise determine the rights, interests, and jurisdiction of the United States, the State of Idaho, or the Tribes, or any of their respective departments or agencies.

AGREEMENTS:

A. Task Identification

1. The Parties agree to work together to establish criteria for defining the scope of an area-wide investigation, selecting specific sites for additional investigation or for response actions, and selecting a lead agency to oversee the site-specific response actions under Agreements with the Companies.
2. The Parties agree that an area-wide investigation should be conducted either by IDEQ or under an Agreement with one or more of the Companies. .
3. The Parties agree that decisions concerning the particulars of how they should define the area-wide investigation, identify specific sites for additional investigation or response action, select a site-specific lead agency, identify support agencies, or otherwise implement their commitment to work together under this MOU will be made by a committee consisting of those persons identified in Appendix A, or their designee.

B. Identification of Lead and Support Agencies

4. For the area-wide investigation and for each specific site identified by the Parties for additional investigation or response action ("Site"), the Parties will

cooperatively identify a Lead and any Support Agencies having an interest at the Site. The designation of an agency as Lead Agency shall not exempt that agency from any access or regulatory requirements applicable to land under the jurisdiction, custody, or control of another Party.

5. IDEQ has been designated the Lead Agency with respect to the area-wide investigation.
6. The Parties agree that the existing AOC for South Maybe Canyon is not affected by or subject to this MOU, with the exception of Paragraph 11 hereof. With respect to any additional Agreements that may be entered into concerning South Maybe Canyon, the Forest Service will remain the Lead Agency. Other Parties may act as Support Agencies pursuant to the terms of this MOU for such subsequent Agreements.
7. The Lead Agency and Support Agencies identified for a Site will negotiate one or more Agreements with the Company or Companies having responsibility for the Site. It is contemplated that Lead and Support Agencies for a Site will mutually determine an approach regarding Agreements appropriate for a particular site. Examples of alternative approaches include:
 - a. A single Agreement with a Company, signed by the Lead and Support Agencies;
 - b. The Lead Agency and a Support Agency entering into separate Agreements with a Company, with the work undertaken based on a single mutually agreed statement of work (SOW); or
 - c. Only the Lead Agency entering into an Agreement with the Company.

In all cases agency coordination would continue, as provided in this MOU.

C. Information Sharing and Coordination

8. The State shall supply an On-Scene Coordinator ("OSC") or Remedial Project Manager ("RPM"), who will have the duties described in the NCP, to oversee the area-wide investigation and the main point of contact for the Federal Agencies and the Companies.
9. The Lead Agency for each Site will supply an OSC/RPM to oversee the implementation of any investigations or response actions undertaken pursuant to

any Agreements between the Lead and Support Agencies and the Companies, and the main contact point for the Support Agencies and the Company or Companies involved.

10. For both the area-wide investigation and for each site-specific investigation and response action, each Support Agency will designate a Project Manager ("Project Manager").
11. The OSC/RPM will share information and coordinate with the Project Manager(s) during both the area-wide investigation and all site-specific investigations and response actions, as follows:
 - a. The OSC/RPM will provide the following to the Project Manager(s):
 - i. Copies of documents related to the investigation, analysis of alternatives, and response action design and implementation, including drafts of documents identified in Paragraphs 14 and 15 of this MOU.
 - ii. Reasonable prior notice of, and an opportunity to participate in, any meetings, conference calls, or other scheduled contacts with the Companies.
 - iii. Reasonable prior notice of activities to take place in connection with the area-wide investigation or at a specific Site.
 - b. The OSC/RPM and the Project Manager(s) will communicate regularly, by phone, correspondence, and meetings, to review the work status and to address any existing or anticipated technical issues.
 - c. The Project Manager(s) will advise the OSC/RPM regarding any issues and concerns of special interest to the Project Manager(s), in addition to those described in this MOU, so that the OSC/RPM can communicate or provide requested information to the Project Manager(s).
12. The Project Manager(s) will use best efforts to provide comments to the OSC/RPM within 21 days of the Project Manager's receipt of a deliverable from the Companies or a request for concurrence pursuant to Paragraphs 14 and 15 of this MOU. If a Project Manager determines that additional time is required to provide comments, the Project Manager will discuss the need for a reasonable amount of additional time (normally 15 days, or less) with the OSC/RPM, as soon as that need is identified.

13. The OSC/RPM will communicate the joint responses of the Parties to the Company(ies).

D. Concurrences

14. With respect to the area-wide investigation, the State, as the Lead Agency, will request concurrence from each Support Agency on a set of decision points to be established by the Signatory Committee or their designees, including but not limited to the following documents or their equivalents:

- annual work plans
- overall investigation plan
- study identification
- sampling and analysis plans
- study completion reports
- changes to statement of work
- quality assurance plan
- health and safety plan
- risk assessment work plan
- draft risk assessment
- final risk assessment

15. With respect to site-specific work, the Lead Agency will request concurrence from each Support Agency on the following decision points:
- a. The Work Plan for the Site investigation and analysis of alternatives. Under CERCLA the analysis of alternatives would be contained within an EE/CA or a Remedial Investigation/Feasibility Study ("RI/FS");
 - b. The Health and Safety Plan;
 - c. The Community Relations/Public Involvement Plan;
 - d. Decisions concerning the need for additional data collection and/or any decision to cease data collection;
 - e. The final site investigation report;
 - f. The final human health and/or ecological risk assessments;
 - g. The final analysis of alternatives;

- h. Each proposed or final response action decision, such as a draft or final action memorandum or a Proposed Plan or Record of Decision ("ROD");
- i. Deliverables from a Company under an Agreement to implement any response action; and
- j. Any decisions pertaining to potential injury to natural resources.

E. Dispute Resolution

16. Resolution of and communication regarding legal issues will be coordinated among appropriate counsel for the Parties and, as appropriate, DOJ attorneys. The legal contacts for the Parties are as follows:

USDA - Attorney, United States Department of Agriculture, Office of General Counsel, James Alexander (or successor or designee)

DOI/BLM/BIA/FWS - Primary Contact: Attorney-Advisor Office of Solicitor, Branch of Federal Facilities Compliance John Seymour, Supporting Contacts: Attorney-Advisor, Division of Mineral Resources Harvey Blank; Attorney-Advisor, Division of Indian Affairs Jean Rice; Attorney-Advisor, Division of Parks and Wildlife John Carlucci; or Attorney-Advisor from DOI Regional or Field Solicitor's Office (or their respective successors or designees)

EPA - Assistant Regional Counsel, EPA Region 10, Elizabeth McKenna *Lisa Cartman*
(or successor or designee) *(through NNE)*

DOJ - Senior Attorney Region 10, Environmental Enforcement Section, Deborah M. Reyher, Ben Franklin Station, P.O. Box 7611, Washington, D.C. 20044, (202) 514-4113 (or successor or designee)

Fred Phillips
Idaho - Administrator, Waste Management & Remediation Division, Idaho Department of Environmental Quality. (or successor or designee) *Orville*

Tribes - Special Counsel, Attorney's Office, Shoshone-Bannock Tribes, Jeanette Wolfley (or successor or designee)

17. With respect to both the area-wide investigation and the site-specific investigations and response actions, the Parties will use their best efforts to resolve technical disagreements informally among the OSC/RPM and the Project Manager(s).

18. If the OSC/RPM and the Project Manager(s) do not reach agreement through informal means, the Parties will use the following dispute resolution process:

- a. Project Manager(s) and the OSC/RPM for the agencies involved at the site will quickly elevate any unresolved dispute, first to the persons identified in Appendix A, and up through the following management personnel (or their designees):

Forest Service Region 4 Deputy Regional Forester

The BLM Idaho State Office Director

EPA Region 10 Unit Manager of the Office of Environmental Cleanup, Ann Williamson

Program Administrator, Solid Waste Management Program, Idaho Department of Environmental Quality

USFWS - Regional Director

Chairman , Shoshone-Bannock Tribes' Land Use Commission

BIA - Deputy Commissioner

- b. If the Parties continue to disagree, the Lead Agency will prepare a proposed written decision which fully evaluates and addresses the expressed concerns of the Support Agencies, and the matter will be elevated to a committee consisting of the signatories to this MOU, or their successors or designees (the "Signatory Committee").
- c. If the Signatory Committee cannot reach agreement then the Supporting Agencies may: 1) accept the proposed decision of the Lead Agency; 2) seek mediation or further elevation through a process agreed upon by the disagreeing Agencies; or 3) rely on their respective rights and authorities under Paragraphs 4, 22-27 of this MOU. An unresolved disagreement at one site or on one issue does not require the withdrawal of a Party or termination of the entire MOU. If a disagreement is confined to one site or issue, coordination actions at other sites and on other issues will continue as specified in this MOU. Likewise, disagreement at one site or on one issue will not affect previous agreements reached at other sites or on other issues or prevent the enforcement of agreements at the subject site that became effective before the time of disagreement.

- d. To avoid impeding work, the time for resolving disputes among the Parties must be short. When informal dispute resolution between the OSC/RPM and Project Manager(s) does not rapidly resolve a dispute, the OSC/RPM and the Project Manager(s) should elevate the dispute through management within 10 days. The Parties should resolve disputes or issue a decision within 21 days of elevation. In exigent circumstances, any Party may immediately elevate a dispute directly to the Signatory Committee.
19. Work will continue during dispute resolution, except for work that is the subject of or dependent upon the outcome of the pending dispute and that may be delayed without posing an imminent and substantial endangerment to human health, welfare, or the environment.
20. The dispute resolution process described in Section E of this MOU is separate from any dispute resolution process that may be described in an Agreement with a Company or Companies. If applicable, the Parties shall implement the dispute resolution process under such Agreements as follows:
- a. The Lead Agency will propose an initial response to disputes raised by the Company, for concurrence by the Support Agencies.
 - b. If the Lead Agency and one or more of the Support Agencies cannot reach agreement as to how to respond to the dispute raised by the Company, a Support Agency may invoke the dispute resolution process under Section E of this MOU, unless the issue has already been disputed separately under this MOU. If the two dispute resolution processes are proceeding simultaneously, the dispute resolution process with the Company may not reach a final decision in a manner inconsistent with the MOU dispute resolution process.

F. CONFIDENTIALITY

21. The Parties recognize that to effectively and efficiently exercise their authorities concerning the Mining Area, their counsel, employees, and consultants may exchange documents and information subject to attorney-client privilege, attorney work product and other forms of privilege. The Parties, therefore, agree to protect these privileges, to the full extent provided by law. This provision shall remain in effect after this MOU terminates.

G. RESERVATION OF RIGHTS

22. The Federal Agencies reserve the right to exercise their rights and authorities under applicable law, including but not limited to, CERCLA, the NCP, and applicable Executive Orders, including Executive Order 12580, as amended and the Mineral Leasing Act, 30 U.S.C. sec. 181 et seq., including but not limited to, 30 U.S.C. § 211, and the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 et seq.
23. IDEQ reserves the right to exercise its rights and authorities under applicable law, including but not limited to, CERCLA, the NCP, the Idaho Environmental Protection and Health Act ("EPHA"), Idaho Code §§ 39-101 to 39-130, and the Hazardous Waste Management Act of 1983 ("HWMA"), Idaho Code §§ 39-4401 to 39-4432.
24. The Tribes reserve the right to exercise their rights and authorities under applicable law, including but not limited to, CERCLA, their inherent sovereign powers, the Fort Bridger Treaty, the Constitution and Bylaws of 1936, and various provisions of the Land Use Policy Ordinance, the Law and Order Code of 1982, and the 1994 Fort Hall Water Rights Agreement.
25. This MOU is not intended to affect, and the Parties hereby expressly reserve, any and all claims or potential claims each may have arising from injuries to natural resources in the Mining Area.
26. No statements made in the course of negotiations among the Parties or in this MOU may be construed to represent an admission, determination, settlement, or adjudication of any legal or factual dispute relating to any Party's rights, privileges or interests.
27. Each Party expressly reserves the right to assert any and all defenses it may have to any claim that may be asserted by the other Parties or by any other person under federal, state, or tribal law.
28. Nothing in this MOU is intended either to create any rights in or grant any cause of action to any person not a party to this MOU or to release or waive any claim, cause of action, demand, or defense in law or equity that any of the Parties to this MOU may have against any person(s) or entity not a party to this MOU.
29. This MOU is not a fund obligating document. Any reimbursement or contribution of funds between the Federal Agencies that have signed this MOU will be handled in accordance with applicable law and procedures. Such

reimbursement or contribution shall be authorized in separate written agreements signed and approved by the appropriate agency officers or representatives pursuant to appropriate statutory authority. No provision of this MOU shall be interpreted or construed as a commitment or requirement that any of the Federal Agencies obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law, in any fiscal year for actions subject to this agreement.

H. GENERAL PROVISIONS

30. This MOU is effective upon the date signed by the last of the Parties.
31. This MOU terminates 10 years after its effective date. Prior to that, this MOU may be terminated, modified, or extended upon the written agreement of the Signatory Committee. A Party may terminate its participation in this MOU upon 14 days written notice to all Parties.

MEMORANDUM OF UNDERSTANDING
concerning
SELENIUM CONTAMINATION IN SOUTHEASTERN IDAHO

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE

By: 

for Jack A. Blackwell
Regional Forester
U.S.D.A. Forest Service, Region 4

June 15, 2000

DATE

MEMORANDUM OF UNDERSTANDING
concerning
SELENIUM CONTAMINATION IN SOUTHEASTERN IDAHO

ENVIRONMENTAL PROTECTION AGENCY

By: 

Mike Gearhard
Hazardous Waste Division Director
EPA Region 10

5 July 2000

DATE

MEMORANDUM OF UNDERSTANDING
concerning
SELENIUM CONTAMINATION IN SOUTHEASTERN IDAHO

IDAHO DIVISION OF ENVIRONMENTAL QUALITY

By: 

C. Stephen Allred

Director

Idaho Department of Environmental Quality

June 30, 2000
DATE

MEMORANDUM OF UNDERSTANDING
concerning
SELENIUM CONTAMINATION IN SOUTHEASTERN IDAHO

UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF LAND MANAGEMENT

By: *Elmer Chale*

for

Martha Hahn

Idaho State Director

Bureau of Land Management

June 21, 2000

DATE

MEMORANDUM OF UNDERSTANDING
concerning
SELENIUM CONTAMINATION IN SOUTHEASTERN IDAHO

SHOSHONE-BANNOCK TRIBES

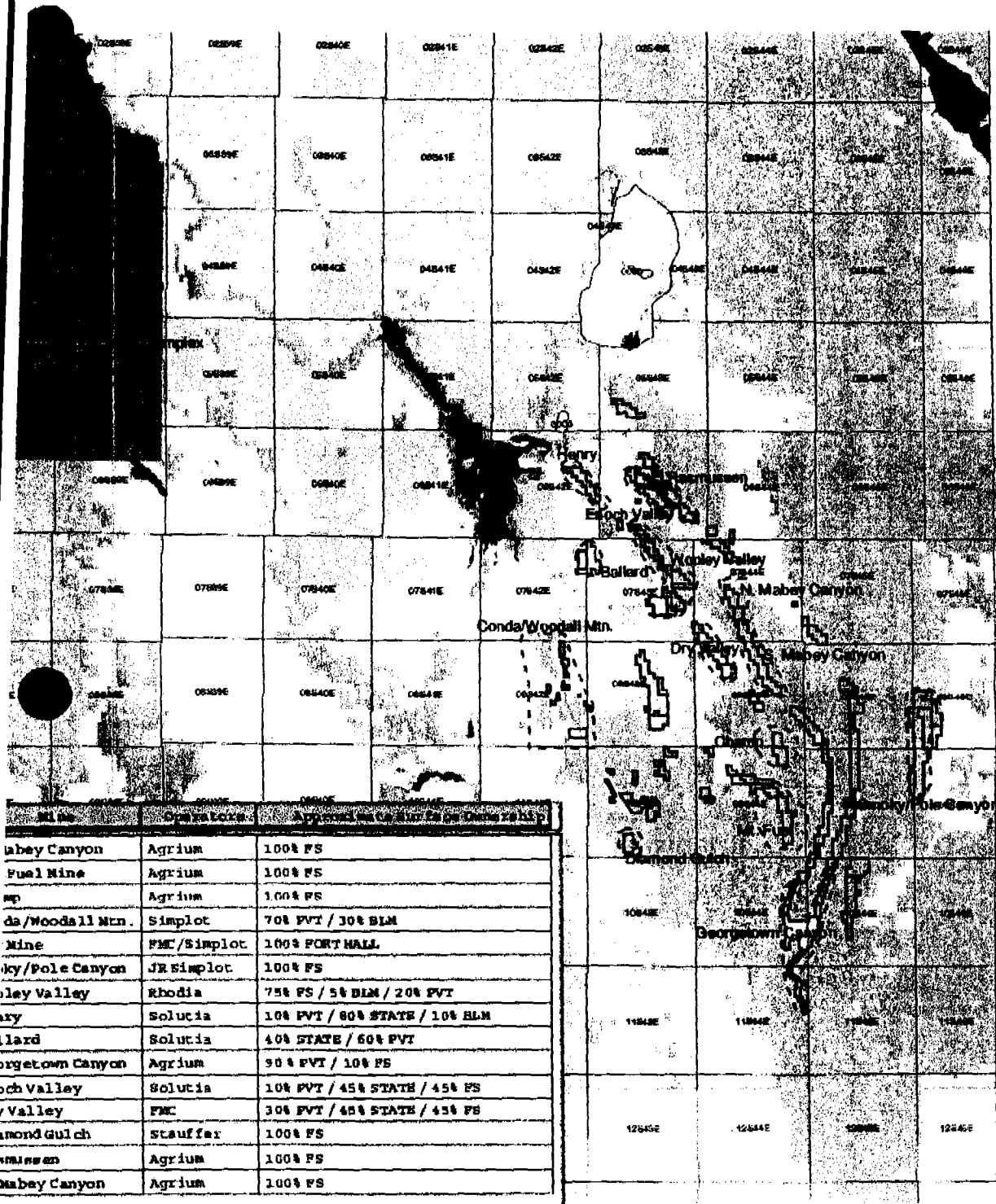
By: Claudio M. Broncho
Claudio Broncho
Vice Chairman, Fort Hall Business Council

6-17-00
DATE

EXHIBIT 1

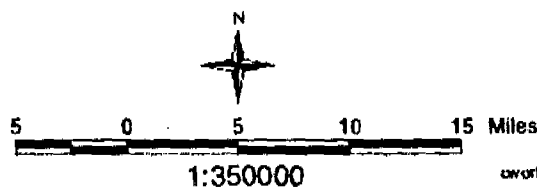
MEMORANDUM OF UNDERSTANDING
concerning
SELENIUM CONTAMINATION IN SOUTHEASTERN IDAHO

Southeast Idaho Phosphate Mine Sites for Selenium Investigations



MOU Concerning Selenium Contamination in Southeast Idaho Exhibit 1

- Mine Leases
- Township Range Boundaries
- Land Ownership
- F.M.
- Fort Hall Reservation
- Caribou National Forest
- Private
- State
- Open Water



mc/j 8/07/00
work/temp/mats/state lease.apr
Size: 11X17

APPENDIX A

MEMORANDUM OF UNDERSTANDING concerning SELENIUM CONTAMINATION IN SOUTHEASTERN IDAHO

For the purpose of this MOU The Parties designate the following persons, or their successors or designees, as general contacts for issues relating to this MOU:

USDA/Forest Service - Forest Supervisor of the Caribou-Targhee National Forest (currently Jerry Reese , 420 North Bridge Street, St. Anthony, ID 83445, (208) 624-3151)

DOI/BLM - District Manager, Upper Snake River District (currently Jim May 1405 Hollipark Driver, Idaho Falls, ID 83401, (208) 524-7500.

BIA - Land Manager (currently Jeffery Loman [add address and phone])

USFWS - Supervisor, Eastern Idaho Field Office (currently Michael J. Donahoo, 4425 Burley Dr., Suite A. Chubbuck, ID 83202)

EPA - Nick Ceto, 1200 Sixth Avenue, ECL 116, Seattle, WA 98101, (206) 553-1816

DOJ - Senior Attorney, Region X, Environmental Enforcement Section (currently Deborah Reyher), Ben Franklin Station, P.O. Box 7611, Washington, D.C. 20044, (202) 514-4113)

IDEQ - Katherine Kelly, Administrator, Waste Management & Remediation Division, 1410 N. Hilton, Boise, ID 83706, 208-373-0445

TRIBES - Jeanette Wolfley, Tribal Attorney, Shoshone-Bannock Tribes, P.O. Box 306, Fort Hall, ID 83203, (208) 232-1922

APPENDIX B

MEMORANDUM OF UNDERSTANDING concerning SELENIUM CONTAMINATION IN SOUTHEASTERN IDAHO

STATEMENT OF AUTHORITY¹

1. Pursuant to CERCLA, the President is responsible for responding to releases of hazardous substances, or pollutants and contaminants, to protect the public health or welfare or the environment. The President's CERCLA response authority is generally delegated to EPA. 42 U.S.C. 9601 et seq.; Executive Order 12580, §§ (2)(g) & 4(d)(1)&(2).
2. Pursuant to Executive Order 12580, as amended by Executive Order 13016, the President delegated the authority to conduct various activities under CERCLA, including investigations and response activities (42 U.S.C. § 9604), cost recovery (42 U.S.C. § 9607), issuing such orders as may be necessary to protect public health or welfare or the environment (42 U.S.C. § 9606(a)), and entering agreements with a potentially responsible party ("PRP") for the PRP to perform investigations (42 U.S.C. § 9622(d)(3)) to several executive departments and agencies, including the Environmental Protection Agency ("EPA"), the United States Department of Agriculture ("USDA"), and the United States Department of the Interior ("DOI").
3. USDA is generally delegated the President's CERCLA authority where a release of a hazardous substance is on, or the sole source of the release is from, a facility under the jurisdiction, custody or control of an agency within the USDA.

¹ Each of the Parties to the Memorandum of Understanding Concerning Selenium Contamination in Southeastern Idaho executed in June 2000 (MOU) has submitted a Statement of Authority as set forth herein pursuant to Paragraph M of the MOU. This Appendix to the MOU does not constitute an agreement among the parties nor have any legal significance separate and apart from its incorporation by reference in the MOU. No statements or assertions contained herein shall be construed to restrict, enlarge, or otherwise determine the rights, interests and jurisdiction of the United States, the State of Idaho, or the Shoshone-Bannock Tribes, or any of their respective departments, agencies or members. Nor shall any statements made herein be construed to represent an admission, determination, settlement or adjudication of any legal or factual dispute relating to any Party's rights, privileges, interests, authority or jurisdiction.

Executive Order 12580, §§ 2(e)(1) and 4(b)(1). The Forest Service administers National Forest System land on behalf of the public. With certain limitations, USDA delegated its CERCLA authority to the Forest Service where a release of a hazardous substance is on, or the sole source of the release is from, a facility under the jurisdiction, custody or control of the Forest Service. Executive Order 12580, §§ 2(e)(1) and 4(b)(1); 7 C.F.R. § 2.60(a)(39). Executive Order 13016 amends EO 12580 to authorize USDA's use of CERCLA Section 106 authority to address releases or threats of releases of hazardous substances affecting lands and natural resources under the Forest Service's trusteeship, jurisdiction, custody or control, subject to the concurrence of the Administrator of EPA. The CERCLA roles of USDA and the Forest Service are also recognized in various provisions of the NCP. 40 C.F.R. Part 300.

4. DOI is generally delegated the President's CERCLA authority where a release of a hazardous substance is on, or the sole source of the release is from, a facility under the jurisdiction, custody or control of an agency within DOI. Executive Order 12580, §§ 2(e)(1) and 4(b)(1). The CERCLA roles of DOI are also recognized in various provisions of the NCP. 40 C.F.R. Part 300. DOI has re-delegated its authorities under Executive Order 12580 to the Bureau Directors with respect to land, resources, and facilities within the jurisdiction, custody, or control of the Bureaus including BLM and BIA. Executive Order 13016 amends EO 12580 to authorize DOI's use of CERCLA Section 106 authority to address releases or threats of releases of hazardous substances affecting lands and natural resources under DOI's trusteeship, jurisdiction, custody or control, subject to the concurrence of the Administrator of EPA. The Secretary of the Interior also has authority to lease phosphate deposits of the United States and lands containing such deposits pursuant to the Mineral Leasing Act, 30 U.S.C. sec. 181 et seq. and to manage public lands pursuant to the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 et seq. These authorities have been implemented by BLM, on behalf of the Secretary, through regulations contained in 43 C.F.R. Parts 3500 and 3590. DOI is also a trustee for natural resources, and USFWS is responsible for the protection and restoration of trust resources injured by uncontrolled releases of hazardous materials. USFWS also is responsible for conducting assessments to establish injury and the dollar equivalent of that injury for collection of damages from parties responsible for releasing hazardous materials. In addition to the authorities stated in Paragraphs 1 and 2, supra, USFWS participates in this MOU based on the following authorities: CERCLA Section 122(j), 42 U.S.C. § 9622(j); the Endangered Species Act of 1973, 16 U.S.C. §§1531-1544; the Migratory Bird Treaty Act of 1918, 16 U.S.C. §§ 703-712; the Bald Eagle Protection Act of 1940, 16 U.S.C. §§ 668-668d; the Fish and Wildlife Coordination Act, 16 U.S.C.

§§ 661-667e; and the National Wildlife Refuge System Administration Act of 1966, 16 U.S.C. §§ 668dd-668ee.

5. IDEQ is the Idaho State agency that generally has authority over the identification, investigation and clean-up of facilities where hazardous substances have come to be located in the State of Idaho. IDEQ exercises this authority pursuant to the Idaho Environmental Protection and Health Act ("EPHA"), Idaho Code §§ 39-101 to 39-130, and the Hazardous Waste Management Act of 1983 ("HWMA"), Idaho Code §§ 39-4401 to 39-4432. IDEQ is also the Idaho State agency with the authority to participate in the initiation and development of CERCLA response actions to be undertaken in the State of Idaho.
6. The Shoshone-Bannock Tribes ("Tribes") are federally recognized Indian tribes with a governing body known as the Fort Hall Business Council, which has authority to enter into this MOU on behalf of the Tribes. The Tribes, on July 3, 1868, concluded the Second Treaty of Fort Bridger with the United States, which was ratified by the United States Senate on February 24, 1869. 15 Stat. 673. Article 4 of the Fort Bridger Treaty reserved the Fort Hall Indian Reservation ("Reservation") as a "permanent home" for the signatory Tribes. Article 4 reserved off-Reservation hunting, fishing and gathering rights to the Tribes; these Treaty-guaranteed rights are exercised on public lands throughout the State of Idaho. The Tribes are obligated to protect both the individual and communal interests of the successors-in-interest of Indian signatories to the Treaty, and are responsible to protect the health, welfare and safety of Tribal members, and the environment of the Tribes. The Tribes have authority over the identification, investigation, and cleanup of hazardous substances found within Indian Country, including on the Reservation, and retain protectable Treaty interests in public lands and water located off-Reservation that may be affected by hazardous substances or pollutant and contaminants. The Tribes exercise their authority pursuant to, among other authorities, CERCLA, their inherent sovereign powers, the Fort Bridger Treaty, the Constitution and Bylaws of 1936, and various provisions of the Land Use Policy Ordinance, the Law and Order Code of 1982, and the 1994 Fort Hall Water Rights Agreement. The Tribes anticipate finalizing a Hazardous Waste Management Act in 2000.

**STATEMENT OF WORK FOR THE
CONDA/WOODALL MOUNTAIN PHOSPHATE MINE
REMEDIAL INVESTIGATION AND FEASIBILITY STUDY
Southeast Idaho Phosphate Mining Resource Area**

Introduction

This statement of work (SOW) provides an overview of Work that will be carried out by the Respondent as it implements the Remedial Investigation and Feasibility Study (RI/FS) at the Conda/Woodall Mountain Phosphate Mine Site (Site). The RI/FS SOW is attached to the Administrative Order on Consent (AOC) for the Site, and is a supporting document for the AOC. Technical work described in the SOW is intended to provide more information to the Respondent for the purpose of implementing the AOC and is not intended to change the meaning of any AOC language. The SOW is also consistent with both the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601 et seq., and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP 2003). The AOC and this SOW are hereafter referred to interchangeably as the "AOC." Any discrepancies between the AOC and the SOW are unintended, and whenever necessary the AOC will control any interpretive disputes.

As provided for in the July 17, 2000 Memorandum of Understanding Concerning Contamination from Phosphate Mining Operations in Southeastern Idaho (MOU 2000), the Idaho Department of Environmental Quality (IDEQ) has been designated as the "Lead Agency" for this Site. The Environmental Protection Agency (EPA) will implement CERCLA at this Site under the CO/AOC. The BLM, the United States Department of the Interior's Fish and Wildlife Service ("FWS"), and the Shoshone-Bannock Tribes ("Tribes") have elected to participate at the Site as Support Agencies. Hereinafter in this SOW, the "Agencies" refers to the IDEQ and the EPA, working in consultation with the BLM, FWS, and the Tribes, as described in the AOC.

Background

The Conda Mine is located within the Western Phosphate Field, approximately 8 miles northeast of Soda Springs, in Caribou County, Idaho, on the east side of State Highway 34. The J.R. Simplot Company's private land and leases cover approximately 12 miles of outcrop from Woodall Mountain on the north to Swan Lake Gulch on the south. Although the private land and leases extend approximately seven miles south of Trail Canyon, the historic mining activities were confined to the areas north of Trail Canyon. Over the history of the Site, 1,700 acres have been disturbed. Simplot has reclaimed approximately 580 acres of the disturbed lands.

The Conda area was mined for phosphate as early as 1906. The Southern California Orange Grove Fertilizer Company owned and operated the mine from 1910 until 1920. From 1920 through 1959, the Anaconda Copper Mining Company owned and operated the mine. The J.R. Simplot Company acquired the mine ownership and began mining operations in 1960.

In the early 1950's, site operations were being shifted from underground to open pit mining until underground mining ceased in 1956. During this period, the Conda town site was established, an 8-mile rail line to Soda Springs was laid, and a mill was constructed. A new mill was built in 1965. Active mining ceased in 1984, and voluntary reclamation activities have been conducted since then.

There is no active mining within the Site. Simplot operates a pump booster station at Conda. The pump station was completed in 1984 and is part of an 87-mile pipeline that transports raw phosphate ore from the Smoky Canyon Mine to the Don Plant in Pocatello, Idaho. The pump station at Conda consists of two 1,200 horsepower booster pumps that boost the pressure to push the raw phosphate ore slurry the remaining 60 miles to Simplot's Don Plant facility in Pocatello, Idaho.

In anticipation of upcoming CERCLA activities, Simplot has voluntarily worked with IDEQ and EPA to collect environmental data at the Site. These data include the media of mine waste, soil, sediments, surface water, and vegetation. Simplot has also collected limited amounts of groundwater data. These data will be subject to a usability analysis and upon the Agencies' approval, will be used in the scoping and characterization efforts described in this SOW.

In conjunction with the other participating agencies and under the July 2000 MOU, IDEQ conducted the Area-Wide Human Health Risk Assessment (AWHHRA) and the Ecological Risk Assessment (AWERA) (TetraTech 2002). These risk assessments evaluated population-level effects on regional wildlife and potential individual human health risks. A population-level effect is defined as a significant decline or toxicological effect in the area-wide population of a particular species. These assessments evaluated risks associated with conditions experienced in and around a number of phosphate mines in southeast Idaho and considered the range of exposure conditions that may be encountered at a typical mine site. IDEQ anticipated that future investigative and remedial activities, including risk assessments, would be performed on a site-specific basis by individual mine owners/operators to identify, characterize and mitigate areas of unacceptable risks. The State of Idaho utilized the AWHHRA and AWERA to develop an Area-wide Risk Management Plan (RMP) for the Southeast Idaho Phosphate Mining Resource Area (IDEQ 2004).

The RMP was developed as a discretionary guidance document to assist Lead and Support Agency representatives with mine-specific risk management decision-

making. In accordance with the Area Wide Investigation (AWI) scope of work, the plan is advisory in nature; all mine-specific risk management decision-making is at the discretion of the assigned Lead Agency, with consultation from the designated Support Agency representatives, according to site-specific goals, needs and conditions, and appropriate regulatory considerations. The RMP provides action levels to assist in the identification of areas of concern and streamline mine-specific risk assessment needs and allow for consistent risk management decision making in consideration of site specific conditions and objectives.

Purpose

The primary purpose of this RI/FS is to investigate the nature and extent of contamination at the Site, to assess the potential risk to human health and the environment in order to develop remedial alternatives, and recommend a preferred alternative to eliminate, reduce, or control risks to human health and the environment. The RI and FS are interactive and may be conducted concurrently so that the data collected in the RI will support the development of remedial alternatives in the FS.

Oversight

Work conducted under the AOC is intended to satisfy the legal requirements for a RI/FS established under both Section 104(a)(1) of CERCLA and Idaho's Environmental Protection & Health Act, Idaho Code §§ 39-101 to 39-130; the Hazardous Waste Management Act of Idaho, Idaho Code §§ 39-4401 to 39-4432; and Idaho's Water Quality Act, Idaho Code §§ 39-3601 et seq. As such, oversight of the Respondents' Work conducted under the SOW will be carried out by EPA and the IDEQ in a manner to assure the satisfaction of all federal and state requirements. The Respondent shall support the Agencies' initiation and conduct of activities related to the implementation of oversight activities.

Schedule

Refer to Appendix A for the primary and potential secondary deliverables and associated schedules.

Guidance

The Respondent shall conduct this RI/FS and produce RI, risk assessment, and FS reports that are in accordance with the AOC and attached SOW, the Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA (RI/FS Guidance) (U.S. EPA, Office of Emergency and Remedial Response, October 1988), and any other guidance that the Agencies use in conducting an RI/FS, as may be amended or modified by EPA, as well as any additional requirements in the AOC and attached SOW. The RI/FS Guidance describes the report format and the required report content.

Roles and Responsibilities

The Respondent shall furnish all necessary personnel, materials, and services necessary to perform the RI/FS, except as otherwise specified in the AOC.

Remedy Requirements

The remedial action alternative selected by the IDEQ and EPA will meet the cleanup standards specified in Section 121 of CERCLA. That is, the selected remedial action will be protective of human health and the environment, will be in compliance with, or include a waiver of, applicable or relevant and appropriate requirements (ARARs) of other laws, will be cost-effective, will utilize permanent solutions and alternative treatment technologies or resource recovery technologies, to the maximum extent practicable, and will address the statutory preference for treatment of the principal threats. The final RI/FS and risk assessment reports, as adopted by the Agencies, will, with the administrative record, form the basis for the selection of the Site's remedy and will provide the information necessary to support the development of the ROD.

TASK 1 - SCOPING

Scoping is the initial planning process of the RI/FS. When scoping the specific aspects of this project, the Respondent shall meet with the Agencies to discuss all project planning decisions and special concerns associated with the Site. During the scoping process, the site-specific objectives of the RI/FS, including the preliminary remediation goals (PRGs), will be proposed by the Respondent and approved by the Agencies, and shall be based on the RMP as appropriate considering site specific conditions at the Conda Mine. The Respondent shall develop and document the specific project scope as discussed during the scoping meeting in the RI/FS Work Plan. In addition to documenting the site-specific objectives of the RI/FS, the Respondent will define a general project management approach for the Site in the RI/FS Work Plan. Because the work required to perform an RI/FS is not fully known at the onset, and is phased in accordance with a Site's complexity and the amount of available information, it may be necessary to modify the Work Plan during the RI/FS to satisfy the objectives of the study.

The following activities shall be performed by the Respondent as a function of the project planning process.

a. Site Background

The Respondent shall gather, analyze, and present the existing Site background information and shall conduct a work session to assist in planning the scope of the RI/FS.

Collect and analyze existing data and document the need for additional data

Before planning RI/FS activities, all existing site data shall be thoroughly compiled and reviewed by the Respondent. Specifically, this must include presently available data relating to the varieties and quantities of hazardous substances at the Site, and past disposal practices. This must also include results from any previous sampling events that may have been conducted in advance of the AOC. This information will be analyzed for usability and, if determined acceptable by the Agencies, will be utilized in determining additional data needed to characterize the Site, better define potential ARARs, and develop a range of preliminarily identified remedial alternatives. Data Quality Objectives (DQOs) shall be established, subject to the Agencies' approval, which will define the quality and quantity of data needed to support the future cleanup decisions and better evaluate the usefulness of existing data.

b. Project Planning

Once the Respondent has collected and analyzed existing data, the specific project scope must be planned. Project planning activities include those tasks described below, as well as identifying data needs, developing a work plan, designing a data collection program, and identifying health and safety protocols. The Respondent shall meet with the Project Manager regarding the following activities and before drafting the scoping deliverables listed below.

Preliminary Conceptual Site Model

Information on the waste sources, pathways, and receptors at the site shall be used to develop a conceptual understanding of the site to evaluate potential risks to human health and the environment. The conceptual site model (CSM) shall include known and suspected sources of contamination, types of contamination and affected media, known and potential routes of migration, and known or potential human and environmental receptors. This effort, in addition to assisting in identification of locations where sampling is necessary, will also assist in the identification of potential remedial technologies. Additional information for evaluating exposure concerns through the use of a conceptual model is provided in the DQO Guidance.

The preliminary CSM for the ERA will include species and their habitats that could be impacted by Site-related contamination and will show the relationships among species and potential exposure pathways. The preliminary CSM for the HHRA will identify potential receptor populations and potential exposure pathways.

Refine and document preliminary remedial action objectives and alternatives

Once existing site information has been analyzed and an understanding of the potential site risks has been established, the Respondent shall review and, if necessary, refine the remedial action objectives that have been identified by the Agencies for each actually or potentially contaminated medium. The revised remedial action objectives will be documented in a technical memorandum and subject to the Agencies' approval. The Respondent shall then identify a preliminary range of broadly defined potential remedial action alternatives and associated technologies. The range of potential alternatives shall encompass, where appropriate, alternatives in which treatment significantly reduces the toxicity, mobility, or volume of the waste; alternatives that involve containment with little or no treatment; and a no-action alternative.

Document the need for treatability studies

If remedial actions involving treatment have been identified by the Respondent or the Agencies, treatability studies shall be required, except where the Respondent can demonstrate to the satisfaction of the Agencies that they are not needed. Where treatability studies are needed, initial treatability testing activities (such as research and study design) must be planned to occur concurrently with site characterization activities.

Begin preliminary identification of potential ARARs

The Respondent shall conduct a preliminary identification of potential state, federal and tribal ARARs (chemical-specific, location-specific, and action-specific). This preliminary ARAR identification, which may include ARARs identified in the RMP (as deemed appropriate by the Agencies), is to assist in the refinement of remedial action objectives and the initial identification of remedial alternatives and ARARs associated with particular actions. ARAR identification will continue as site conditions, contaminants, and remedial action alternatives are better defined.

c. *Scoping Deliverables*

At the conclusion of the project planning phase, the Respondent shall submit an RI/FS Work Plan, a Sampling and Analysis Plan (SAP) consisting of a field sampling plan (FSP) and a quality assurance project plan (QAPP), and a Site health and safety plan (HASP). The RI/FS Work Plan and SAP must be reviewed and approved by the Agencies prior to the initiation of field activities.

RI/FS Work Plan

The Work Plan documenting the decisions and evaluations completed during the scoping process shall be submitted to the Project Manager for review and approval. The Work Plan shall be developed in conjunction with the SAP and the HASP, although each plan may be delivered under separate cover. The Work

Plan shall include a comprehensive description of the work to be performed, including the methodologies to be utilized, as well as a corresponding schedule for completion. In addition, the Work Plan shall include the rationale for performing the required activities. Specifically, the Work Plan must present a statement of the problem(s) and potential problem(s) posed by the Site and the objectives of the RI/FS. Furthermore, the plan must include a Site background summary setting forth the Site description including the geographic location of the Site, and to the extent possible, a description of the Site's physiography, hydrology, hydrogeology, geology, demographics, ecological, cultural, and natural resource features; a synopsis of the Site history and a description of previous responses that have been conducted at the Site by local, state, federal, or private parties; and a summary of the existing data in terms of physical and chemical characteristics of the contaminants identified, and their distribution among the environmental media at the Site. In addition, the plan shall include a description of the respondent's site management strategy developed during scoping and a preliminary identification of remedial alternatives and data needs for evaluation of remedial alternatives. The plan must reflect coordination with treatability study requirements, if treatability studies are initiated. It must include a process for and manner of identifying federal, state, and tribal ARARs (chemical-specific, location-specific, and action-specific).

Finally, the major part of the Work Plan is a detailed description of the tasks to be performed, information needed for each task, information to be produced during and at the conclusion of each task, and a description of the work products that will be submitted to the Project Manager. This includes the deliverables as set forth in the remainder of this SOW; a schedule for each of the required activities which is consistent with the RI/FS guidance; and a project management plan, including a data management plan (e.g., requirements for project management systems and software, minimum data requirements, data format and backup data management), monthly reports to the Project Manager and meetings and presentations to the Agencies at the conclusion of each major phase of the RI/FS. The Respondent must refer to Appendix B of the RI/FS Guidance for a comprehensive description of the contents of the required RI/FS Work Plan. Because of the unknown nature of the Site and iterative nature of the RI/FS, additional data requirements and analyses may be identified throughout the process. The Respondent shall submit a technical memorandum documenting the need for additional data, and identifying the DQOs whenever such requirements are identified. In any event, the Respondent is responsible for fulfilling additional data and analysis needs identified by the Agencies consistent with the general scope and objectives of this RI/FS.

Sampling and Analysis Plan

The Respondent shall prepare a SAP to ensure that sample collection and analytical activities are conducted in accordance with technically acceptable

protocols and that the data meet DQOs. The SAP provides a mechanism for planning field activities and consists of a FSP and a QAPP.

The FSP must define in detail the sampling and data-gathering methods that will be used on the project. It must include sampling objectives, sample location and frequency, sampling equipment and procedures, and sample handling and analysis. The QAPP must describe the project objectives and organization, functional activities, and quality assurance and quality control (QA/QC) protocols that will be used to achieve the desired DQOs. The DQOs shall, at a minimum, reflect use of analytic methods to identify contamination and remediate contamination consistent with the levels for remedial action objectives identified in the NCP. In addition, the QAPP must address the following: sampling procedures; sample custody; analytical procedures; data reduction, validation, and reporting; and personnel qualifications.

Field personnel must be available for EPA QA/QC training and orientation, if necessary. The Respondent shall demonstrate, in advance and to the satisfaction of the Agencies, that each laboratory it may use is qualified to conduct the proposed work. This includes use of methods and analytical protocols for the COPCs in the media of interest within detection and quantification limits consistent with both QA/QC procedures and DQOs approved in the QAPP for the Site by the Agencies. The laboratory must have and follow an approved QA program. If a laboratory not in the Contract Laboratory Program (CLP) is selected, methods consistent with CLP methods that would be used at this site for the purposes proposed and QA/QC procedures approved by the Agencies will be used. If the laboratory is not in the CLP program, a laboratory QA program must be submitted for the Agencies' review and approval. The Agencies may require that the Respondent submit detailed information to demonstrate that the laboratory is qualified to conduct the work, including information on personnel qualifications, equipment, and material specifications. The Respondent shall provide assurances that the Agencies have access to laboratory personnel, equipment, and records for sample collection, transportation, and analysis.

As determined appropriate by the Agencies, given site-specific considerations, the SAP will be consistent with those developed for other regional phosphate mining sites to allow for valuable comparison and integration of data. The SAP, FSP, and QAPP shall be prepared in accordance with EPA DQO guidance documents (EPA 2000, 2002a, 2002b, and 2006).

Potential Target Analytes

The following chemicals include the initial chemicals of potential concern (COPCs). The initial COPC list includes, but is not limited to, the analytes listed below. The Respondent shall review this list for surface water and groundwater analytes relative to ARARs, screening levels, site-specific risk assessment data needs, treatability study data needs, and feasibility study data needs, and shall

propose in the SAP, subject to Agency approval, whether the analysis needs to include dissolved constituents, total constituents, or both.

Chemicals/Analytes of Potential Concern for Surface Water

The following COPCs shall be included in the analyses for all surface water sampling stations during the spring runoff sampling event conducted for the first time following signing of the AOC. This spring runoff sampling event shall be conducted as close as possible to the peak of the spring runoff hydrograph.

Laboratory Analyses

- Aluminum
- Antimony
- Arsenic
- Barium
- Beryllium
- Cadmium
- Chromium (III)
- Chromium (VI)
- Cobalt
- Copper
- Hardness
- Iron
- Lead
- Manganese
- Mercury
- Molybdenum
- Nitrogen, total Kjeldahl
- Selenium
- Silver
- Thallium
- Total Dissolved Solids
- Total Suspended Solids
- Zinc
- Uranium

Field Analyses

- Conductivity
- Dissolved Oxygen
- Flow
- pH
- Temperature

The Respondent shall review the results of the first round of surface water sampling, shall compare the analytical results for each of the COPCs against the screening levels, and shall recommend COPCs to be eliminated from the above list for subsequent surface water sampling events. Upon approval by the Agencies, the COPCs eliminated by this process do not need to be included in the analyses for subsequent surface water sampling events.

Chemicals/Analytes of Potential Concern for Sediments:

The following COPCs shall be included in the analyses for all sediment sampling stations

- Cadmium
- Chromium
- Nickel
- Selenium
- Vanadium
- Zinc

Chemicals/Analytes of Potential Concern for Soils/Waste Rock:

The following COPCs shall be included in the analyses for all soils/waste rock sampling stations

- Cadmium
- Chromium
- Nickel
- Selenium
- Vanadium
- Zinc

Chemicals/Analytes of Potential Concern for Vegetation:

The following COPCs shall be included in the analyses for all vegetation sampling stations

- Cadmium
- Chromium
- Nickel
- Selenium
- Zinc

Groundwater Chemicals/Analytes of Potential Concern

The COPCs listed below shall be included in the analyses for all groundwater sampling stations during the spring high groundwater sampling event conducted for the first time following signing of the AOC. This first groundwater sampling event shall be conducted as close as possible to the period of highest groundwater table.

Laboratory Analyses

- Alkalinity
- Aluminum
- Antimony
- Arsenic
- Barium
- Beryllium
- Cadmium
- Calcium
- Chloride
- Chromium III
- Chromium VI
- Cobalt
- Copper
- Iron
- Magnesium
- Manganese
- Mercury
- Molybdenum
- Nickel
- Nitrate/nitrite as N
- Nitrogen (TKN)
- Orthophosphate
- Potassium
- Selenium
- Silver
- Sodium
- Sulfate
- Thallium
- Total Dissolved Solids
- Total Suspended Solids
- Total Organic Carbon
- Uranium
- Vanadium
- Zinc

Field Analyses

- Conductivity
- Dissolved Oxygen or ORP
- Ferrous Iron

- Ferric Iron
- Nitrite
- pH
- Temperature

The following COPCs shall also be included in the analyses of groundwater from wells in the vicinity of the former Conda Townsite

- VOCs
- SVOCs
- PAHs

The Respondent shall review the results of the first round of groundwater sampling, shall compare the analytical results for each of the COPCs against the screening levels, and shall recommend COPCs to be eliminated from the above list for subsequent groundwater sampling events. Upon approval by the Agencies, the COPCs eliminated by this process do not need to be included in the analyses for subsequent groundwater sampling events.

Site Health and Safety Plan

shall be prepared in conformance with the Respondent's health and safety program, and in compliance with OSHA regulations and protocols. It should be noted that the Agencies do not "approve" the Respondent's health and safety plan. The Agencies review it to ensure that all necessary elements are included, and that the plan provides for the protection of human health and the environment.

COMMUNITY RELATIONS

The implementation of community relations activities are the responsibility of the Agencies. The critical community relations planning steps performed by the Agencies include conducting community interviews and developing a community relations plan. Although implementation of the community relations plan is the responsibility of the Agencies, the Respondent may assist by providing information regarding the Site's history, participating in public meetings, and preparing fact sheets for distribution to the general public. (The Agencies are not required, however, to formally respond to significant comments except during the formal public comment period on the proposed plan.) In addition, the Respondent shall establish a community information repository, at or near the Site, to house one copy of the administrative record. The extent of community relations activities involvement by potentially responsible parties (PRPs) is left to the discretion of the Agencies. The Respondent's community relations responsibilities, if any, will be specified in the community relations plan. All PRP-conducted community relations activities will be subject to oversight by the Agencies.

TASK 3 - SITE CHARACTERIZATION

As part of the RI, the Respondent shall perform the activities described in this task, including the preparation of Data Summary Reports (DSRs) and the RI report. The overall objective of RI/FS site characterization is to describe areas of the site that may pose a threat to human health or the environment. This is accomplished by first determining a site's physiography, geology, and hydrology/hydrogeology, and defining surface and subsurface pathways of migration. The Respondent shall identify the sources of contamination and define the nature, extent, and volume of the sources of contamination, including their physical and chemical constituents as well as their concentrations at incremental locations to background in the affected media. The Respondent shall also investigate the extent of migration of this contamination as well as its volume and any changes in its physical or chemical characteristics, to provide for a comprehensive understanding of the nature and extent of contamination at the Site. Using this information, contaminant fate and transport is then determined and projected.

During this phase of the RI/FS, the Work Plan, SAP, and HASP are implemented. Field data are collected and analyzed to provide the information required to accomplish the objectives of the study. The Respondent shall notify the Project Manager at least two weeks in advance of the field work regarding the planned dates for the RI/FS field activities. The Project Manager may waive the two week notification requirement as appropriate (e.g. in the case of time-critical sampling such as spring high runoff sampling). In such instances, notification of the Project Manager shall occur as soon as practicable in advance of the field activities. The Respondent shall demonstrate that the laboratory and type of laboratory analyses that will be utilized during site characterization meet the specific QA/QC requirements and the DQOs of the Site investigation as specified in the SAP. In view of the unknown site conditions, activities are often iterative, and to satisfy the objectives of the RI/FS it may be necessary for the Respondent to supplement the work specified in the initial work plan. In addition to the deliverables below, the Respondent shall provide monthly progress reports and participate in work sessions when appropriate.

a. Field Investigation

The field investigation shall include the gathering of data to define site physical and biological characteristics, sources of contamination, and the nature and extent of contamination at the Site. These activities shall be performed by the Respondent in accordance with the Work Plan and SAP. At a minimum, this shall address the following:

Implement and document field support activities

The Respondent shall initiate field support activities following approval of the Work Plan and SAP. Field support activities may include obtaining access to the

Site, scheduling, and procuring equipment, office space, laboratory services, and/or contractors. The Respondent shall notify the Project Manager at least two weeks prior to initiating field support activities so that the Agencies may adequately schedule oversight tasks. The Respondent shall also notify the Project Manager, in writing, upon completion of field support activities.

Investigate and define site physical and biological characteristics

The Respondent shall collect data on the physical and biological characteristics of the Site and its surrounding areas, including the physiography, geology, and hydrology, and specific physical characteristics identified in the Work Plan. This information must be ascertained through a combination of physical measurements, observations, and sampling efforts, and will be utilized to define potential transport pathways and human and ecological receptor populations. In defining the Site's physical characteristics the Respondent shall also obtain sufficient engineering data (such as pumping characteristics) for the projection of contaminant fate and transport, and development and screening of remedial action alternatives, including information to assess treatment technologies.

Define sources of contamination

The Respondent shall locate each source of contamination, and define the areal extent and depth of contamination associated with each source. The physical characteristics and chemical constituents and their concentrations must be determined for all known and discovered sources of contamination. The Respondent shall conduct sufficient sampling to define the boundaries of the contaminant sources to the level established in the QA/QC plan and DQOs.

Defining the source of contamination must include analyzing the potential for contaminant release (e.g., long term leaching from soil), contaminant mobility and persistence, and characteristics important for evaluating remedial actions, including information to assess treatment technologies.

Describe the nature and extent of contamination

The Respondent shall gather information to describe the nature and extent of contamination as a final step during the field investigation. To describe the nature and extent of contamination, the Respondent must utilize the information and site physical and biological characteristics and sources of contamination to give a preliminary estimate of the contaminants that may have migrated. The Respondent shall then implement an iterative monitoring program, if determined to be necessary by the Agencies, and any study program identified in the Work Plan or SAP such that by using analytical techniques sufficient to detect and quantify the concentration of contaminants, the migration of contaminants through the various media at the Site can be determined. In addition, the Respondent shall gather data for calculations of contaminant fate and transport. This process must be continued until the area and depth of contamination are known to the level of contamination established in the QA/QC plan and DQOs. The Agencies will use

the information on the nature and extent of contamination to determine the level of risk presented by the Site. Respondents shall use this information to help to determine aspects of the appropriate remedial action alternatives to be evaluated.

b. Data Analyses

Evaluate site characteristics

The Respondent shall analyze and evaluate the data to describe: (1) site physical and biological characteristics; (2) contaminant source characteristics; (3) nature and extent of contamination; and (4) contaminant fate and transport. Results of the Site physical characteristics, source characteristics, and extent of contamination analyses are utilized in the analysis of contaminant fate and transport. The evaluation must include the actual and potential magnitude of releases from the sources, and horizontal and vertical spread of contamination as well as mobility and persistence of contaminants. Where modeling is appropriate, such models shall be identified to the Agencies in a technical memorandum prior to their use. All data and programming, including any proprietary programs, shall be made available to the Agencies together with a sensitivity analysis. All validated data shall be made available to the Agencies in electronic format (i.e., computer disc or equivalent). The validated data, along with QA/QC information and data validation summaries, shall be submitted in electronic format within 90 calendar days from the date of collection of the last sample from each sampling event. The Respondent shall agree to discuss and then collect any data required to address data gaps identified by the Agencies as needed to complete the RI/FS and risk assessment. Also, this evaluation shall provide any information relevant to site characteristics necessary for evaluation of the need for remedial action in the risk assessment and for the development and evaluation of remedial alternatives. Analyses of data collected for site characterization must meet the DQOs developed in the QA/QC plan stated in the SAP (or revised during the RI).

c. Data Management Procedures

The Respondent shall consistently document the quality and validity of field and laboratory data compiled during the RI.

Document field activities

Information gathered during site characterization shall be consistently documented and adequately recorded by the Respondent in well-maintained field logs and laboratory reports. The method(s) of documentation must be specified in the Work Plan and/or the SAP. Field logs must be utilized to document observations, measurements, and significant events that have occurred during field activities. Laboratory reports must document sample custody, analytical responsibility, analytical results, adherence to prescribed protocols, nonconformity events, corrective measures, and/or data deficiencies.

Maintain sample management and tracking

The Respondent shall maintain field reports, sample shipment records, analytical results, and QA/QC reports to ensure that only validated analytical data are reported and utilized in the development and evaluation of remedial alternatives. Analytical results developed under the Work Plan must not be included in any site characterization reports unless accompanied by or cross-referenced to a corresponding QA/QC report. In addition, the Respondent shall establish a data security system to safeguard chain-of-custody forms and other project records to prevent loss, damage, or alteration of project documentation.

d. Site Characterization Deliverables

The Respondent shall prepare Data Summary Reports following each annual field season and prepare the RI report at the completion of the Site investigation.

Data Summary Reports

After completing each annual field season's sampling and analysis, the Respondent shall prepare a concise site characterization Data Summary Report (DSR). This report must review the investigative activities that have taken place, and describe and display site data documenting the location and characteristics of surface and subsurface features and contamination at the Site, including the affected media, locations, types, physical state, concentrations of contaminants and quantities. In addition, the location, dimensions, physical condition and varying concentrations of each contaminant throughout each source, and the extent of contaminant migration through each of the affected media must be documented. Each DSR must also evaluate for data gaps and identify additional and/or modified sampling and analysis that shall be included in modifications to the SAP for each subsequent field season. If acceptable to the Agencies, the DSR following the final field season of data collection can be eliminated as a separate deliverable, and the information collected during the final field season can be presented in the RI report.

Remedial Investigation Report (RI)

The Respondent shall prepare and submit a draft RI report to the Project Manager for review and approval. This report shall summarize results of field activities to characterize the Site, sources of contamination, nature and extent of contamination, and the fate and transport of contaminants. The Respondent shall refer to the RI/FS Guidance for an outline of the report format and contents. Following comment by the Agencies, the Respondent shall prepare a final RI report which satisfactorily addresses the Agencies' comments.

Risk Assessment (RA)

The area-wide human health and ecological risk assessments (AWHHRA and AWEA) have identified major contaminant source materials and release mechanisms to evaluate population-level effects on regional wildlife and potential

individual human health risks. In addition, detailed investigations at other nearby phosphate mining sites have also identified major contaminant source materials and release mechanisms in performing site-specific risk assessments. The Respondent shall conduct a Human Health Risk Assessment (HHRA) and an Ecological Risk Assessment (ERA) to assess the potential human health and ecological risks posed by the Conda Mine site in the absence of any remedial action. To avoid duplicating efforts, potential receptors and pathways, exposure scenarios and assumptions, and other information used in the AWHHRA and AWERA and at other nearby phosphate mining sites shall be considered and used, as determined appropriate by the Agencies, in a site-specific risk assessment at Conda Mine using exposure point concentrations developed from data collected at the Conda Mine site.

The HHRA must include the following components, which may be derived from the AWHHR and Area Wide Risk Management Plan

- Identification of chemicals of potential concern that are considered to be most important to the human health evaluation.
- Exposure assessment to identify the pathways by which potential human exposure could occur and estimate the magnitude, frequency, and duration of the exposure.
- Toxicity assessment to summarize the toxicity of the selected chemicals and the relationship between magnitude of exposure and adverse human health effects.
- Risk characterization to integrate the toxicity and exposure assessments to estimate the potential risks to human health from exposure to chemicals in environmental media.

The HHRA shall be conducted in accordance with EPA human health risk assessment guidance (EPA, 1989, 1991, 1992, 2004, and 2005)

The ERA shall be conducted using EPA's eight step process. Information derived from the AWERA and the Area Wide Risk Management Plan, as applicable, will be used in the ERA. The ERA will, evaluate the likelihood of adverse ecological effects occurring as a result of exposure to physical or chemical stressors. The ERA shall contain detailed information regarding the contact or co-occurrence of stressors with the biological community at the site. Exposure profiles shall be developed to identify ecological, habitats, and pathways of exposure. The sources and distribution of stressors in the environment shall also be characterized. The ERA shall be conducted in accordance with EPA ecological risk assessment guidance (EPA 1997a, 1997b, and 1998).

Risk Assessment Report (RA)

The Respondent shall prepare and submit a draft RA report to the Project Manager for review and approval. This report shall summarize results of the site-

specific Human Health and Ecological Risk Assessments. Following comment by the Agencies, the Respondent shall prepare a final RA report which satisfactorily addresses the Agencies' comments.

TASK 4 - TREATABILITY STUDIES

If candidate treatment technologies have not been sufficiently demonstrated; or cannot be adequately evaluated for this site on the basis of available information, treatability testing must be conducted. Treatability testing shall be performed by the Respondent, if necessary, to assist in the detailed analysis of alternatives. In addition, if applicable, testing results and operating conditions shall be used in the detailed design of the selected remedial technology. The following activities shall support any treatability studies.

a. Determination of Candidate Technologies in Need of Testing

The Respondent shall propose in a technical memorandum, subject to the Agencies' review and approval, candidate technologies for a treatability studies program during project planning (Task 1). The listing of candidate technologies must cover the range of technologies required for alternatives analysis (Task 6.a.)

The specific data requirements for the testing program will be determined and refined during site characterization and the development and screening of remedial alternatives (Tasks 2 and 5, respectively).

Once a decision has been made to perform treatability studies, the Respondent shall propose, subject to the Agencies' review and approval, the type of treatability testing to use (e.g., bench versus pilot). Because of the time required to design, fabricate, and install pilot scale equipment as well as perform testing for various operating conditions, the decision to perform pilot testing should be made as early in the process as possible to minimize potential delays of the FS. To assure that a treatability testing program is completed on time, and with accurate results, the Respondent shall either submit to the Project Manager a treatability testing Work Plan or an amendment to the original site Work Plan for the Agencies' review and approval.

b. Treatability Deliverables

The deliverables that are required, in addition to the memorandum identifying candidate technologies, if treatability testing is conducted, include a Work Plan, a SAP, and a final treatability evaluation report. The Agencies may also require a treatability study HASP, where appropriate.

Treatability testing work plan

The Respondent shall prepare a treatability testing Work Plan or amendment to the original site Work Plan for the Agencies' review and approval, describing the Site background, remedial technology(ies) to be tested, test objectives, experimental procedures, treatability conditions to be tested, measurements of

performance, analytical methods, data management and analysis, health and safety, and residual waste management. The DQOs for treatability testing must be documented as well. If pilot scale treatability testing is to be performed, the pilot scale Work Plan will describe pilot plant installation and start-up, pilot plant operation and maintenance procedures, operating conditions to be tested, a sampling plan to determine pilot plant performance, and a detailed HASP. If testing is to be performed off-site, permitting requirements must be addressed.

Treatability study SAP

If the original QAPP or FSP is not adequate for defining the activities to be performed during the treatability tests, a separate treatability study SAP or amendment to the original site SAP must be prepared by the Respondent for the Agencies' review and approval. Task 1, Item c. of this statement of work provides additional information on the requirements of the SAP.

Treatability study HASP

If the original HASP is not adequate for defining the activities to be performed during the treatment tests, a separate or amended HASP must be developed by the Respondent. Task 1, Item c, of this statement of work provides additional information on the requirements of the HASP. The Agencies do not "approve" the treatability study HASP.

Treatability study evaluation report

Following completion of treatability testing, the Respondent shall analyze and interpret the testing results in a technical report to the Agencies. Depending on the sequence of activities, this report may be a part of the RI or FS report or a separate deliverable. The report must evaluate each technology's effectiveness, implementability, cost, and actual results as compared with predicted results. The report must also evaluate full scale application of the technology, including a sensitivity analysis identifying the key parameters affecting full-scale operation.

TASK 5 - DEVELOPMENT AND SCREENING OF REMEDIAL ALTERNATIVES

The development and screening of remedial alternatives is performed to develop an appropriate range of waste management options that will be evaluated. This range of alternatives must include, as appropriate, options in which treatment is used to reduce the toxicity, mobility, or volume of wastes, but varying in the types of treatment, the amount treated, and the manner in which long-term residuals or untreated wastes are managed; options involving containment with little or no treatment; options involving both treatment and containment; and a no-action alternative. The following activities shall be performed by the Respondent as a function of the development and screening of remedial alternatives.

a. *Development and Screening of Remedial Alternatives*

The Respondent shall begin to develop and evaluate a range of appropriate waste management options that, at a minimum, ensure protection of human health and the environment, concurrent with the RI site characterization task.

Refine and document remedial action objectives

Based on the risk assessment, the Respondent shall review and, if necessary, modify the site-specific remedial action objectives, specifically the preliminary remediation goals (PRGs) that were approved by the Agencies during the scoping phase of the RI/FS Workplan. The revised PRGs will be documented in a technical memorandum that will be reviewed and approved by the Agencies. These modified PRGs must specify the contaminants and media of interest, exposure pathways and receptors, and an acceptable contaminant level or range of levels (at particular locations for each exposure route). Objectives and action levels from the RMP may be used in the review and modification of the PRGs, considering the site-specific conditions at the Conda mine site, as determined appropriate by the Agencies.

Develop general response actions

The Respondent shall develop general response actions for each medium of interest defining containment, treatment, excavation, pumping, or other actions, singly or in combination, to satisfy the remedial action objectives.

Identify areas or volumes of media

The Respondent shall identify areas or volumes of media to which general response actions may apply, taking into account requirements for protectiveness as identified in the remedial action objectives. The chemical and physical characterization of the Site must also be taken into account.

Identify, screen, and document remedial technologies

The Respondent shall identify and evaluate technologies applicable to each general response action to eliminate those that cannot be implemented at the Site. General response actions must be refined to specify remedial technology types. Technology process options for each of the technology types shall be identified either concurrent with the identification of technology types, or following the screening of the considered technology types. Process options must be evaluated on the basis of effectiveness, implementability, and cost factors to select and retain one or, if necessary, more representative processes for each technology type. The technology types and process options must be summarized for inclusion in a technical memorandum. The reasons for eliminating alternatives must be specified.

Assemble and document alternatives

The Respondent shall assemble selected representative technologies into alternatives for each affected medium or operable unit. Together, all of the alternatives will represent a range of treatment and containment combinations that will address either the Site or the operable unit as a whole. A summary of the assembled alternatives and their related action-specific ARARs must be prepared for the Agencies by the Respondent for inclusion in a technical memorandum. The reasons for eliminating alternatives during the preliminary screening process must be specified.

Refine alternatives

The Respondent shall refine the remedial alternatives to identify contaminant volume addressed by the proposed process and sizing of critical unit operations as necessary. Sufficient information must be collected for an adequate comparison of alternatives. PRGs for each chemical in each medium must also be modified as necessary to incorporate any new risk assessment information presented in the risk assessment report. Additionally, action-specific ARARs must be updated as the remedial alternatives are refined.

Conduct and document screening evaluation of each alternative

The Respondent may perform a final screening process based on short- and long-term aspects of effectiveness, implementability, and relative cost. Generally, this screening process is only necessary when there are many feasible alternatives available for detailed analysis. If necessary, the screening of alternatives shall be conducted to assure that only the alternatives with the most favorable composite evaluation of all factors are retained for further analysis. As appropriate, the screening must preserve the range of treatment and containment alternatives that was initially developed. The range of remaining alternatives must include options that use treatment technologies and permanent solutions to the maximum extent practicable. The Respondent shall prepare a technical memorandum summarizing the results and reasoning employed in screening, arraying alternatives that remain after screening, and identifying the action-specific ARARs for the alternatives that remain after screening.

TASK 6 - DETAILED ANALYSIS OF REMEDIAL ALTERNATIVES

The detailed analysis shall be conducted by the Respondent to provide the Agencies with the information needed to allow for the selection of a site remedy. This analysis is the final task to be performed by the Respondent during the FS.

a. Detailed Analysis of Alternatives

The Respondent shall conduct a detailed analysis of alternatives which must consist of an analysis of each option against a set of nine evaluation criteria and a

comparative analysis of all options using the same evaluation criteria as a basis for comparison.

Apply evaluation criteria and document analysis

The Respondent shall apply nine evaluation criteria to the assembled remedial alternatives to ensure that the selected remedial alternative will be protective of human health and the environment; will be in compliance with, or include a waiver of, ARARs; will be cost-effective; will utilize permanent solutions and alternative treatment technologies, or resource recovery technologies, to the maximum extent practicable; and will address the statutory preference for treatment as a principal element. The evaluation criteria include: (1) overall protection of human health and the environment; (2) compliance with ARARs; (3) long-term effectiveness and permanence; (4) reduction of toxicity, mobility, or volume; (5) short-term effectiveness; (6) implementability; (7) costs; (8) state (or support agency) acceptance; and (9) community acceptance. (Note: Criteria 8 and 9 are considered by the Agencies after the RI/FS report has been released to the general public.) For each alternative, the Respondent must provide: (1) a description of the alternative that outlines the waste management strategy involved and identifies the key ARARs associated with each alternative; and (2) a discussion of the individual criterion assessment. If the Respondent does not have direct input on Criteria 8 state (or support agency) acceptance and (9) community acceptance, these will be addressed by the Agencies.

Compare alternatives against each other and document the comparison of alternatives

The Respondent shall perform a comparative analysis between the remedial alternatives. That is, each alternative must be compared against the others using the evaluation criteria as a basis of comparison. Identification and selection of the preferred alternative are reserved by the Agencies. The Respondent shall prepare a technical memorandum summarizing the results of the comparative analysis.

b. Detailed Analysis Deliverables

In addition to the technical memorandum summarizing the results of the comparative analysis, the Respondent shall submit a draft FS report to the Project Manager for review and approval.

Feasibility study report

The Respondent shall prepare a draft FS report for the Agencies' review and comment. This report, as ultimately adopted or amended by the Agencies, provides a basis for remedy selection by the Agencies and documents the development and analysis of remedial alternatives. The Respondent shall refer to the RI/FS Guidance for an outline of the report format and the required report content. The Respondent shall prepare a final FS report which satisfactorily addresses the Agencies' comments.

REFERENCES

- EPA 1988. *Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA*, U.S. EPA, Office of Emergency and Remedial Response, Interim Final, October, 1988.
- EPA 1989. *Risk Assessment Guidance for Superfund (RAGS), Volume I: Human Health Evaluation Manual. Interim Final*, USEPA, December 1989.
- EPA 1991. *Human Health Evaluation Manual, Supplemental Guidance: Standard Default Exposure Factors*, USEPA, 1991.
- EPA 1992. *Supplemental Guidance to RAGS: Calculating the Concentration Term*. USEPA Office of Solid Waste and Emergency Response, publication 9285.7-081, 1992.
- EPA 1997a. *Ecological Risk Assessment Guidance for Superfund: Process for Designing and Conducting Ecological Risk Assessments*. EPA 540-R-97-006, 1997.
- EPA 1997b. *EPA Region 10 Supplemental Ecological Risk Assessment Guidance for Superfund*. EPA 910-R-97-005, 1997.
- EPA 1998. *Guidelines for Ecological Risk Assessment*. EPA/630/R-95/002F, 1998.
- EPA 2000. *Guidance for the Data Quality Objectives Process (EPA QA/G4)*, 2000.
- EPA 2002a. *Guidance for Choosing a Sampling Design for Environmental Data Collection (EPA QA/G-5S)*. EPA/240/R-02/005, 2002.
- EPA 2002b. *Guidance on Quality Assurance Project Plans (EPA QA/G-5)*. EPA/240/R-02/009, 2002.
- EPA 2004. *Risk Assessment Guidance for Superfund—Volume I: Human Health Evaluation Manual (Part E, Supplemental Guidance for Dermal Risk Assessment), Final*. EPA/540/R/99/005, 2004.
- EPA 2005. *Guidelines for Carcinogen Risk Assessment*. EPA/630/P-03/001F, 2005.
- EPA 2006. *Guidance on Systematic Planning Using the Data Quality Objectives Process (EPA QA/G-4)*. EPA/240/B-06/001, February 2006.
- IDEQ 2004. *Area Wide Risk Management Plan: Removal Action Goals and Objectives, and Action Levels for Addressing Releases and Impacts from Historic Phosphate Mining Operations in Southeast Idaho*, February 2004, IDEQ# WST.RMIN.SEA.W.6005.67068.

MOU 2000. *Memorandum of Understanding between USDA-Forest Service Region 4, Environmental Protection Agency Region 10, USDOl (Bureau of Land Management, Bureau of Indian Affairs and Fish and Wildlife Service), the Shoshone-Bannock Tribes and State of Idaho Division of Environmental Quality concerning Contamination from Phosphate Mining Operations in Southeastern Idaho.* July, 2000.

NCP 2003. *The National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR, Part 300,* July 1, 2003.

TetraTech 2002. *Final Area Wide Human Health and Ecological Risk Assessment, Selenium Project, Southeast Idaho Phosphate Mining Resource Area.* Prepared for Idaho Department of Environmental Quality by TetraTech EM, Inc., December, 2002.

Appendices

Appendix A

Conda Mine RI/FS, SOW, and Work Sessions Schedule (all days are calendar days)

RI/FS Work Plan/Sampling and Analysis Plan (WP/SAP):

- Draft due 60 days after the effective date of the CO/AOC
- 45 days for Agencies to submit comments (for planning purposes)
- 21 days for Respondents to submit response to Agencies' comments
- Meeting/Conference call to discuss responses
- 30 days to submit Final RI/FS WP/SAP¹

Data Summary Reports:

- Submit draft DSRs 120 days after receipt of final laboratory data
- 30 days for Agencies to submit comments (for planning purposes)
- 15 days for Respondents to submit response to Agencies' comments
- Meeting/Conference call to discuss responses
- 30 days to submit Final DSRs¹

Remedial Investigation Report (RI):

- Submit draft RI 120 days after receipt of final laboratory data
- 45 days for Agencies to submit comments (for planning purposes)
- 21 days for Respondents to submit response to Agencies' comments
- Meeting/Conference call to discuss responses
- 30 days to submit Final RI¹

Risk Assessment Report (RA):

- Submit draft RA 60 days after submittal of Final RI
- 45 days for Agencies to submit comments (for planning purposes)
- 21 days for Respondents to submit response to Agencies' comments
- Meeting/Conference call to discuss responses
- 30 days to submit Final RA¹

¹ These documents may initially be released as "draft final" pending final resolution of issues.

Feasibility Study:

- Submit draft FS 120 days after RA Report finalization
- 45 days for Agencies to submit comments (for planning purposes)
- 21 days for Respondents to submit response to Agencies' comments
- Meeting/Conference call to discuss responses
- 30 days to submit Final FS¹

Data Validation Summaries:

- Submit 90 calendar days from the date of collection of the last sample from each sampling event

Interim Deliverables

A schedule for interim deliverables identified in the SOW shall be provided in the WP, for example:

- Technical memorandum to explain and document Remedial Action Objectives (RAOs)
- Technical memorandum to document Preliminary Remedial Goals (PRGs)
- Treatability studies and associated deliverables, as necessary
- Preliminary Screening of Alternatives Memo, etc.

Work Sessions

A schedule for work sessions shall be provided in the RI/FS WP

In the matter of:

Area-Wide Investigation of
Contamination from
Phosphate Mining in
Southeastern Idaho

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CONSENT ORDER/
ADMINISTRATIVE ORDER
ON CONSENT

I. PARTIES

The Idaho Department of Environmental Quality ("IDEQ"), the United States Environmental Protection Agency ("EPA"), the United States Department of Agriculture ("USDA"), U.S. Forest Service ("USFS"), and the United States Department of Interior ("USDO"), Bureau of Land Management ("BLM"), U.S. Fish and Wildlife Service ("USFWS"), Bureau of Indian Affairs ("BIA") and the Shoshone-Bannock Indian Tribes, (collectively referred to as the "Agencies") hereby enter into this Consent Order/Administrative Order on Consent ("CO/AOC") with J.R. Simplot Company, Nu-West Industries, Inc., Rhodia, Inc., FMC Corporation, P4 Production, L.L.C., (collectively referred to as the "Companies").

II. PURPOSE AND SCOPE OF AGREEMENT

The purpose and scope of this CO/AOC is to identify procedures to be used to ensure the recovery of costs incurred by the IDEQ's performance or oversight and review, and EPA's¹, USFWS's and the Tribes' oversight and review of an Area-Wide Investigation into contamination from phosphate mining operations in Southeast Idaho. The activities for which performance or oversight costs are to be recovered are more particularly set forth in the Scope of Work ("SOW") attached hereto as Exhibit "A," which is incorporated herein by reference.

¹ Included as part of EPA's costs will be costs associated with the Agency for Toxic Substances and Disease Registry's (ATSDR's) activities under the CO/AOC.

ORIGINAL

III. LIMITATION OF SCOPE

Nothing herein shall be deemed to affect or govern any of the parties' rights, duties or obligations with respect to the identification, remediation, or clean up of any specific site. Each and every Party hereto reserves all claims, rights, causes of action and defenses with respect to any and all specific sites.

IV. AUTHORITIES

The Statements of Authority set forth below shall not be construed to restrict, enlarge, or otherwise determine the rights, interests and jurisdiction of the United States, the State of Idaho, or the Shoshone-Bannock Tribes, or any of their respective departments, agencies or members. Nor shall any statements made herein be construed to represent an admission, determination, settlement or adjudication of any legal or factual dispute relating to any Party's rights, privileges, interests, authority or jurisdiction. Each and every Party hereto reserves all claims, rights, causes of action and defenses with respect to any claim of jurisdiction expressed herein.

1. **FEDERAL AUTHORITY.** Pursuant to Executive Order 12580, as amended by Executive Order 13016, the President delegated the authority to conduct various activities and recover costs under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") to several executive departments and agencies, including EPA, USDA, and DOI. Such response activities include investigations and response activities (42 U.S.C. § 9604), cost recovery (42 U.S.C. § 9607), issuing such orders as may be necessary to protect public health or welfare or the environment (42 U.S.C. § 9606(a)), and entering into agreements with a potentially responsible Party ("PRP") for the PRP to perform investigations (42 U.S.C. § 9622(d)(3)).
2. **STATE AUTHORITY.** IDEQ is the Idaho state agency that generally has authority over the identification, investigation and clean-up of facilities where hazardous substances have come to be located in the State of Idaho. IDEQ exercises this authority pursuant to the Idaho Environmental Protection and Health Act ("EPHA"), Idaho Code §§ 39-101 to 39-130, and the Hazardous Waste Management Act of 1983 ("HWMA"), Idaho Code §§ 39-4401 to 39-4432. IDEQ is the Idaho state agency with the authority to participate in the initiation and development of CERCLA response actions to be undertaken in the State of Idaho. Pursuant to Idaho Code § 39-108(b) and § 39-4414(2), IDEQ is entitled to recover from liable parties its reasonable costs associated with any violation of any permit, standard or regulation, including the costs of any non-routine investigation.

3. **TRIBAL AUTHORITIES.** The Shoshone-Bannock Tribes ("Tribes") are federally recognized Indian tribes with a governing body known as the Fort Hall Business Council, which has authority to enter into this CO/AOC on behalf of the Tribes. The Tribes have authority over the identification, investigation, and cleanup of hazardous substances found within Indian Country, including on the Reservation. The Tribes exercise their authority pursuant to, among other authorities, CERCLA, their inherent sovereign powers, the Fort Bridger Treaty, the Constitution and Bylaws of 1936, and various provisions of the Land Use Policy Ordinance, the Law and Order Code of 1982, and the 1994 Fort Hall Water Rights Agreement. Pursuant to CERCLA the Tribes can recover from liable parties all costs incurred for actions taken in response to the release or threatened release of hazardous substances that are not inconsistent with the National Contingency Plan ("NCP").

V. FACTUAL BACKGROUND

Elevated concentrations of selenium and other hazardous substances, pollutants and contaminants have been identified in water, soil, vegetation and wildlife associated with current or former phosphate mining operations in southeastern Idaho. The IDEQ has determined that these elevated levels of selenium, and other hazardous substances, pollutants and contaminants are a violation of the standards, rules and regulations established pursuant to Idaho Code §§ 39-101 et seq. and 39-4401 et seq. The Companies dispute this assertion.

The approximate extent of currently known past and present phosphate mining operations in this region (the "Mining Area") is indicated on the map attached hereto for informational purposes as Exhibit B, and includes areas located variously on federal land, tribal land, private land, state land, or a mixture of these types of ownership or jurisdictional areas. Individual phosphate mining operations located within the Mining Area also are listed in Exhibit B.

The Agencies and the Companies have incurred and will continue to incur costs in responding to the release and threat of release of hazardous substances in the Mining Area. The Companies and other entities may be liable for some or all of those response costs.

Effective July 15, 2000, the Agencies entered into a Memorandum of Understanding ("MOU"). The MOU provides a framework for the coordination of the actions and authorities of the parties to the MOU. Under the terms of the MOU, IDEQ is designated the lead agency with respect to the Area-Wide Investigation; coordination with the other parties to the MOU is expected to occur pursuant to the terms of the MOU. The scope of the Area-Wide Investigation is set forth in the SOW.

VI.
AGREEMENT TO REIMBURSE COSTS
ASSOCIATED WITH AREA-WIDE INVESTIGATION

1. Without admitting any liability and expressly reserving all claims and defenses except as specifically waived herein, the parties hereto mutually agree as follows:
2. The parties hereby mutually waive any and all claims for past costs incurred by them in connection with the Area-Wide Investigation conducted by the Selenium Working Group of the Idaho Mining Association ("Working Group") regarding the release of selenium or other contaminants as a result of phosphate mining in the Mining Area. The term "past costs" as used herein shall mean such Working Group costs incurred prior to August 1, 2000. Past costs do not include costs incurred by any of the parties for work conducted outside the Working Group relating to the release of selenium or other contaminants as a result of phosphate mining in the Mining Area, or the costs described in Paragraph 3, below.
3. The Parties and the United States Department of Justice ("DOJ"), on behalf of all the Federal Agencies and the Tribes, hereby reserve all claims for response costs, both past and future, associated with site-specific investigations or incurred in connection with the Area-Wide Investigation and not reimbursed or waived pursuant to the terms of this CO/AOC. Site-specific past costs include, but are not limited to, costs attributable to the South Maybe Canyon Mine Site, which is the subject of a June 8, 1998 Administrative Order on Consent between the Forest Service and Nu-West Industries, Inc. and Nu-West Mining, Inc. and costs incurred in connection with preliminary assessments and PRP searches for specific phosphate mining sites.
4. The Mining Companies assert that claims for cost recovery by certain Federal Agencies may be barred or diminished pursuant to Section 113 and/or Section 120 of CERCLA (42 USC § 9613, 9620). The Federal Agencies and Tribes dispute this assertion. The Mining Companies expressly reserve any and all claims and/or defenses based on these provisions.
5. IDEQ Cost Recovery Procedures: Subject to the funding commitments set forth below, the Companies hereby agree to reimburse IDEQ for its reasonable costs incurred by IDEQ in connection with performance, oversight and review of the items set forth and described in the SOW as provided herein.
 - a. Funding Commitment: The Companies hereby agree to commit the sum of up to five million dollars (\$5,000,000.00) over a ten (10) year period commencing on the date following signature of this agreement for the purpose of reimbursing IDEQ for all of its reasonable costs incurred in the performance of the work identified in the SOW. Said funds shall be made available to IDEQ as follows:

1. Year One: Up to one million dollars (\$1,000,000.00)
2. Year Two: Up to one million dollars (\$1,000,000.00)
3. Years Three through Ten: Up to Three Hundred Seventy Five Thousand dollars (\$375,000.00) per year.

b. If any of the amounts of funding set forth in paragraph 5.a. of this section are not utilized in a given fiscal year, such surplus funding shall be made available in subsequent fiscal years within the ten (10) year project life set forth above.

c. The funding commitments set forth above shall not be deemed to constitute a waiver by the State of Idaho, or IDEQ of any claim or right or cause of action to recover amounts in addition to the amounts set forth above and IDEQ hereby expressly reserves the right to recover amounts which exceed the funding commitments set forth above in accordance with the procedure set forth in paragraph 5.d. of this section.

d. If during any fiscal year the amount sought by IDEQ under this CO exceeds the annual or decennial funding commitments of the Companies expressed herein, the IDEQ shall submit a supplemental request for payment to the Companies setting forth the amounts sought in excess of the funding commitments set forth above and a detailed explanation of the reasons for such exceedence. Within thirty (30) days of receipt of the Supplemental Request the Companies must either agree to payment of the Supplemental Request for payment, or deny the supplemental request for payment. Any denial, must set forth a detailed explanation upon which the Companies predicate denial. Any denial of a request for supplemental payment is subject to the informal dispute resolution provisions contained herein but not formal dispute resolution. Any such supplemental request for payment shall not obligate the Companies to make payment. IDEQ reserves the right to institute a civil action for the recovery of these costs pursuant to Idaho Code § 39-108(b) and § 39-4414(2).

e. Budget, Billing and Payment Procedures: Not later than June 30 of each year, IDEQ shall submit to the Companies estimated annual budgets (Annual Budget Estimate) for the costs and expenditures associated with performance, oversight and review of the work outlined in the SOW expected to be incurred by IDEQ in the following fiscal year. The Companies shall have 30 days after receipt of the Annual Budget Estimate within which to submit comments or object to items contained in the Annual Budget Estimate.

f. The Annual Budget Estimate shall not be binding upon any Party. The Annual Budget Estimate shall serve solely as an estimate of reasonably foreseeable costs and expenditures. IDEQ shall not be limited by any amount set forth in the Annual Budget Estimate, and shall not be required to expend the specific amounts set forth therein.

g. Within thirty (30) days after the end of each fiscal quarter, IDEQ shall provide the Companies with detailed statements of expenditures made during the fiscal quarter. Such expenditures shall be in accordance with the authorities of IDEQ as set forth in paragraph IV herein. Subject to the limitations on amounts set forth above the Companies shall remit payment for these expenditures to IDEQ within thirty (30) days of receipt of IDEQ's statement of expenditures.

h. If the Companies dispute any amounts set forth in the statement of expenditures, the Companies shall remit payment for all sums not in dispute. Thereafter, any disputes concerning an amount owed by the Companies shall be resolved through the dispute resolution process set forth in Section XII of this CO/AOC. If resolution of a dispute results in any portion of the disputed sum being awarded to IDEQ, the Companies shall within fifteen (15) days after receipt of the final decision: (i) remit the amount awarded plus interest accruing at the statutory rate for interest on judgments from the date originally due; or (ii) proceed with other legal remedies in accordance with Section XII herein.

6. Federal Costs: The Companies hereby agree to reimburse the EPA and USFWS for their "Oversight Costs" as defined herein.

a. Definition of Oversight Costs. "Oversight Costs" shall mean all direct and indirect costs incurred by the EPA, USFWS in connection with their oversight and review of the Work performed by or on behalf of IDEQ under this CO/AOC after its effective date as set forth and described in the SOW, including, but not limited to, time and travel costs of EPA and USFWS personnel associated with oversight of the work performed under the SOW; contractor costs; federal inter-agency agreement costs; compliance monitoring, including the collection and analysis of split samples; site visits; discussions regarding disputes that may arise under this CO/AOC; review and approval or disapproval of reports; and any other costs directly incurred in overseeing this CO/AOC.

b. Federal Payment Procedure. EPA and USFWS each will submit to the Companies annual bills and supporting cost summaries for Oversight Costs incurred during the billing period. The first bills for Oversight Costs shall be issued no sooner than ninety (90) days after the effective date of this CO/AOC. The Companies shall remit payment for these expenditures to the billing entity (EPA or USFWS) within thirty (30) days of receipt of the BILL. Payments to EPA shall be made by certified or cashier's check made payable to EPA Hazardous Substance Superfund. Each check shall reference the name and address of the Party making payment, the Area-Wide Investigation, the EPA Region 10 number (106R), and shall be sent to:

EPA Superfund
Region 10
1200 Sixth Avenue, DMP-146
Seattle, WA 98101.

The Companies shall simultaneously transmit a copy of the check to:

Financial Management Officer
Region 10
1200 Sixth Avenue, OMP-146
Seattle, WA 98101

Payments to USFWS shall be made by certified or cashier's check made payable to the United States Fish and Wildlife Service and mailed to:

U.S. Fish & Wildlife Service
ATTN: Debra Freeman
911 N.E. 11th Avenue
Portland, OR 97232-4181

If the Companies dispute any amounts set forth in a statement of expenditures, the Companies shall remit payment for all sums not in dispute. Thereafter, any disputes concerning an amount owed by the Companies shall be resolved through the dispute resolution process set forth in Section XII of this CO/AOC. If resolution of a dispute results in any portion of the disputed sum being awarded to EPA, USFWS, the Companies shall within fifteen (15) days after receipt of the final decision: (i) remit the amount awarded plus interest accruing at the statutory rate for interest on judgments from the date originally due; or (ii) proceed with other legal remedies in accordance with Section XII herein.

c. Interest. In the event that any payment required by paragraph 6(a) is not made when due, interest shall accrue on the unpaid balance. Interest shall continue to accrue on the unpaid balance through the date of payment. "Interest" shall mean interest at the current rate specified for interest on investments of the Hazardous Substance Superfund established by 26 USC 9507, compounded annually on October 1 of each year, in accordance with 42 USC § 9607(a). Payments of interest shall be in addition to such other remedies or sanctions available to the Federal Agencies by virtue of the Companies' failure to make timely payments under this section. Payments required by this paragraph shall be made in the same manner described in paragraph 6(b) above.

7. Tribal Costs: The Companies hereby agree to commit to the sum of up to Sixty-Five Thousand Dollars (\$65,000) per year for a three (3) year period commencing on the date

following complete execution of this agreement for the purpose of providing support for a full time position for a Selenium Project Manager, including fringe benefits and said Manager's reasonable costs and expenditures, to perform the oversight, investigation and review of work in the area-wide scope of work and site specific work. If the annual funding amount is not utilized in a given fiscal year, such surplus funding shall be made available in subsequent fiscal years during the three (3) year period referenced above. Unless terminated by the Companies, this agreement shall automatically renew upon expiration of the three year term for an additional three (3) year term under the same terms and conditions set forth herein.

a. Budget, Billing and Payment Procedures: Not later than July 30th of each year, the Tribes shall submit to the Companies an estimated annual budget for the salary and costs associated with the Selenium Project Manager which shall not exceed Sixty-Five Thousand Dollars (\$65,000). The annual estimates shall not be binding on any Party. The annual estimates for costs and expenditures shall serve solely as an estimate of reasonably foreseeable costs and expenditures. The Tribes shall not be limited by the estimates of costs and expenditures, and shall not be required to expend the specific amounts set forth in the annual budget provided to the Companies. The Companies shall have 30 days after receipt of the Tribes' estimated annual budget within which to submit comments or object to items contained in the annual budget. If there are objections by the Companies, the parties shall proceed in accordance with paragraph 7.b. herein. If there are no objections by the Companies, the Companies shall remit payment of the annual salary, and within thirty (30) days after the end of each fiscal quarter, the Tribes shall provide the Companies with statements of expenditures made during the fiscal quarter. Such expenditures shall be in accordance with the authorities of the Tribes as set forth in Section IV herein. Subject to the limitations on amounts set forth above, the Companies shall remit payment for these expenditures to the Tribes within thirty (30) days of receipt of the Tribes' statement of expenditures.

b. Dispute of any amount: If the Companies dispute any amounts set forth in the statements of expenditures, the Companies shall remit payment for all sums not in dispute. Any disputes concerning an amount owed by the Companies to the Tribes shall be resolved through the dispute resolution process set forth in Section XII of this CO/AOC. If resolution of a dispute results in any portion of the disputed sum being awarded to the Tribes, the Companies shall within fifteen (15) days after receipt of the final decision: (i) remit the amount awarded plus interest accruing at the statutory rate for interest on judgments from the date originally due; or (ii) proceed with other legal remedies in accordance with Section XII herein.

c. Interest: In the event that any payment required in paragraph 7.b. is not made when due, interest shall accrue on the unpaid balance. Interest shall continue to accrue on the unpaid balance through the date of payment. "Interest" shall mean interest at the current rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. §

9607(a). Payments of interest shall be in addition to such other remedies or sanctions available to the Tribes by virtue of the Companies' failure to make timely payments under this section.

VII.

DELEGATION AND ASSIGNMENT OF RESPONSIBILITY

It is the purpose and intent of IDEQ as lead agency to utilize cost efficient and expedient measures in performance of this CO/AOC and the attached SOW. IDEQ, or its designated contractor, shall have the primary responsibility for performing the tasks and subtasks described in the attached SOW. The IDEQ shall determine, in consultation with the Federal Agencies and the Tribes, appropriate resources for the performance of the tasks and subtasks described in the attached SOW. This may include assignment of tasks to the Mining Companies and their selected contractors, where appropriate, based upon consideration of efficiency and available resources. The Federal Agencies and the Tribes shall participate in decisions regarding such assignments and oversee such work as provided in the Memorandum of Understanding described in Section V above. All work assigned to the Mining Companies will be performed pursuant to enforceable agreements that will be separately executed and made subject to this CO/AOC. Nothing in this section or in the Scope of Work shall, in any way, limit the authority or the ability of the IDEQ to collect samples or take any actions necessary for completion of the Area-Wide Investigation, the provisions of the CO/AOC or the Scope of Work, which the IDEQ, in its discretion, determines are necessary and appropriate.

VIII.

CONSISTENCY WITH NATIONAL CONTINGENCY PLAN

All work implemented or required under this CO/AOC and the SOW shall be conducted in a manner which is not inconsistent with the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. Part 300, including without limitation 40 C.F.R. Subpart H. (40 C.F.R. § 300.415, and § 300.700).

IX.

COMPLIANCE WITH OTHER LAWS

Except as set forth herein, this CO/AOC shall not relieve the Companies from their obligations to comply with any of the applicable provisions of and the Parties hereto specifically reserve all other rights under the EPHA; the HWMA; the Idaho Water Quality Standards and Wastewater Treatment Requirements, IDAPA 16.01.02.001 to 16.01.02.999; the Rules and Standards for Hazardous Waste, IDAPA 16.01.05.001 to 16.01.05.999; the Ground Water Quality Rule, IDAPA 16.01.11.001-16.01.11.999, CERCLA, 42 U.S.C. 9601- 9675 and any other applicable local, state, tribal or federal law.

X.
COORDINATION WITH SITE-SPECIFIC REMEDIAL ACTIONS

The parties contemplate that various site-specific investigations, risk assessments and possible remedial actions will or may be performed in the future on all or some of the individual mining operations listed in Exhibit B pursuant to the terms of negotiated Consent Orders/Administrative Orders on Consent. Because this Area-Wide investigation includes a general, region-wide risk assessment and planning for general remedial action objectives and measures that are intended to be used to facilitate, expedite and provide consistency for future site-specific work, the parties generally contemplate and intend that this Area-Wide Investigation will be closely coordinated and not performed in a duplicative or inconsistent manner with any site-specific work. By stating this general goal, however, IDEQ, the Federal Agencies and the Tribes do not waive or limit any of their authorities with respect to determining the scope of or schedule for either the Area-Wide Investigation or any site-specific work.

XI.
GENERAL PROVISIONS

1. Conflict Between Consent Order and Exhibits. To the extent of any conflict between the meaning of the terms and provisions in this CO/AOC and the Exhibits, the meaning in this CO/AOC shall control.
2. Modifications. This CO/AOC may be modified by the Parties' mutual agreement. Agreed modifications to the CO/AOC must be in writing signed by an authorized representative of each party.

IDEQ, the Federal Agencies and the Tribes reserve the right to modify the SOW pursuant to the Memorandum of Understanding among them, but the Mining Companies will not be obligated under this CO/AOC to pay for any increase in costs incurred by IDEQ, the Federal Agencies or the Tribes as a result of such modification, unless they agree to pay such increased costs in writing. IDEQ, the Federal Agencies and the Tribes nonetheless reserve the right to seek recovery of such increased costs from the Companies.

3. Notice. All communications required by this CO/AOC shall be addressed to:

IDEQ – Orville Greene, Administrator, Waste Management & Remediation
Division, Idaho Department of Environmental Quality, 1410 N. Hilton, Boise, ID
83706, 208-373-0445

EPA - Nick Ceto, U.S. Environmental Protection Agency, 1200 Sixth Avenue,
ECL 116, Seattle, WA 98101, (206) 553-1816

USDA/Forest Service - Forest Supervisor of the Caribou-Targhee National Forest
(currently Jerry Reese, 1405 Hollipark Dr., Idaho Falls, ID, 83401, (208) 557-5760)

BIA - Land Manager (currently Allen Sedik, CERCLA Coordinator, U.S. Department of the Interior, Bureau of Indian Affairs, 1849 C St., NW, MS 4513, Washington, DC, 20240, (202) 208-5474)

USFWS - Contaminants Specialist, Snake River Basin Office (currently Susan Burch, 1387 S. Vinnell Way, Room 368, Boise, ID 83709, (208) 378-5243)

TRIBES - Jeanette Wolfley, Tribal Attorney, Shoshone-Bannock Tribes, P.O. Box 306, Fort Hall, ID 83203, (208) 232-1922

DOI/BLM - District Manager, Upper Snake River District (currently Jim May 1405 Hollipark Drive, Idaho Falls, ID 83401, (208) 524-7500.

J. R. Simplot Company - Bruce Winegar, Frontier Bldg., 1130 W. Hwy. 30, Pocatello, ID 83204, (208) 235-5675.

Nu-West Industries, Inc. - Scott Sprague, Agrium U.S., Inc., 3010 Conda Rd., Soda Springs, ID 83276, (208) 543-4387.

Rhodia, Inc. - Dan Bersanti, Rhodia, Inc., P.O. Box 3146, Butte, MT, 59702, (406) 782-1215.

FMC Corporation - Rob Hartman, P.O. Box 4111, Pocatello, ID 83202, (208) 236-8658

P4 Production, L.L.C. - Robert Geddes, P.O. Box 816, Soda Springs Plant Highway 34 N., Soda Springs, ID 83276, (208) 547-4300.

4. Effect on Successors and Assigns. This CO/AOC shall bind the parties and their respective successors, agents, and assigns until such time as the terms of this CO/AOC are fully met.

5. Reservation of Natural Resource Damage Claims. Nothing herein shall be deemed to waive or compromise any claims, known or unknown, existing or potential for damages to natural resources whether in existence at the time of this CO/AOC or arising in the future.

6. State Tolling Agreement. The State of Idaho and the Companies expressly stipulate and agree that any statute of limitations applicable to any claims under CERCLA, EPHA, HWMA or any

other applicable law, for natural resource damages or other damages to the environment, is hereby tolled as of the effective date hereof, until such time as this CO/AOC is terminated. IDEQ and Companies further stipulate and agree that this tolling provision is not intended to restrict IDEQ and Companies from enforcing their rights under this CO/AOC, or to limit the time within which IDEQ and Companies may enforce such rights as provided in Idaho Code § 29-110. IDEQ and Companies further stipulate and agree that the IDEQ's right to pursue a claim for natural resource damages and the Companies' right to raise any defense to a natural resource damage claim are not rights created by or enforceable under this CO/AOC and, therefore, the tolling provision set forth herein is not prohibited by Idaho Code § 29-110.

7. Federal Tolling Agreement. The Companies and the Federal Agencies shall enter into a separate tolling agreement.

8. Tribal Tolling Agreement. The Companies and the Tribes shall enter into a separate tolling agreement.

9. Third Person's Rights Unaffected. Except as expressly provided herein, nothing in this CO/AOC shall be construed to create any rights in, or grant any cause of action to, the Parties or any person not a Party to this CO/AOC.

10. Effective Date. The effective date of this CO/AOC shall be the date of signature by the last of the Parties.

11. Authority. Each undersigned representative certifies that he or she is fully authorized to enter into the terms and conditions of this CO/AOC, and to execute and legally bind such Party to this document.

XII. DISPUTE RESOLUTION

Informal Resolution: It is understood that disputes may arise between the Companies and either a single agency participant or multiple agency participants regarding cost recovery items governed by this CO/AOC. The Companies and the Agency (or Agencies) shall attempt to resolve expeditiously and informally disputes that arise under this CO/AOC. An agreement to informally resolve a dispute reached by the Parties pursuant to this section shall be memorialized in writing, signed by both Parties, and shall, upon the signature of both parties, be incorporated into and become an enforceable element of this CO/AOC.

Formal Resolution: If, after consultation, the Companies and the Agency(ies) still cannot agree on disputed matters, the Companies and the Agency(ies) may initiate a Dispute Resolution Process by written request directed to each Party's representative identified in Section XI, Paragraph 3 above. This dispute resolution process shall apply only to disputes involving

accounting errors in the calculation of amounts due, claims that costs billed are not within the categories of costs covered by this CO/AOC and/or alleged inconsistencies of response actions with the NCP.

The request for dispute resolution shall set forth the position of the requesting Party regarding the disputed matter, and include supporting data. The affected agency shall designate a Dispute Reviewer who shall issue a decision regarding the disputed matter. The decision of the Dispute Reviewer shall be incorporated into and become an enforceable element of this CO/AOC upon the parties' receipt of the decision regarding the dispute.

Nothing in this Order precludes the parties from agreeing to use other forms of alternative dispute resolution.

Review of IDEQ Disputes: With respect to disputes involving IDEQ's costs, either Party may seek review of the Dispute Reviewer's decision in accordance with applicable law including initiation of a contested case pursuant to the Hazardous Waste Management Act and Rules for Contested Cases before the Idaho Department of Environmental Quality, IDAPA 58.05.03, et seq.

Review of Federal and Tribal Disputes: With respect to disputes involving costs billed by any Federal Agency or the Tribes, the Dispute Reviewer's decision shall be final, but shall not constitute final agency action for purposes of initiating judicial review unless and until such Federal Agency or Tribes initiate a judicial action to enforce this CO/AOC.

Effect on other Matters: If the Dispute Resolution Process is invoked with respect to a particular matter, all other matters not directly affected thereby shall proceed according to the requirements of this CO/AOC.

XIII. TERMINATION

This CO/AOC shall be terminated in writing by the Parties hereto upon completion of the items set forth in the attached SOW and final payment of all oversight costs and obligations under Section VI of this CO/AOC.

XIV. SIGNATURE IN COUNTERPARTS

This CO/AOC may be signed in counterparts. Upon signature the original signature pages will be forwarded to the Department of Environmental Quality which shall maintain an original copy of the CO/AOC and all original signatures thereto. Copies shall be provided to all parties.

IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY

By:


C. Stephen Allred, Director

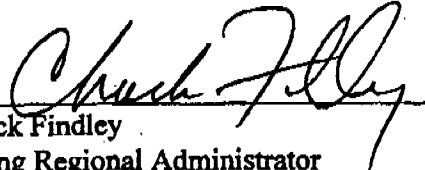
Idaho Department of Environmental Quality

Date

7/20/01

ENVIRONMENTAL PROTECTION AGENCY

By:


Chuck Findley
Acting Regional Administrator
EPA Region 10

5-03-01
Date

UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF LAND MANAGEMENT

By:

Martha Hahn
Idaho State Director
Bureau of Land Management

Date

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE

By:

Jack A. Blackwell
Regional Forester
U.S.D.A. Forest Service, Region 4

Date

ENVIRONMENTAL PROTECTION AGENCY

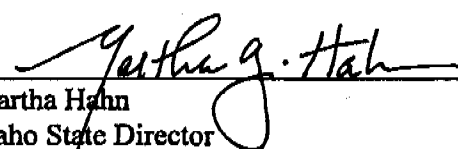
By:

Chuck Findley
Acting Regional Administrator
EPA Region 10

Date

UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF LAND MANAGEMENT

By:



Martha Hahn
Idaho State Director
Bureau of Land Management

April 27, 2001

Date

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE

By:

Jack A. Blackwell
Regional Forester
U.S.D.A. Forest Service, Region 4

Date

ENVIRONMENTAL PROTECTION AGENCY

By: _____

Chuck Findley
Acting Regional Administrator
EPA Region 10

Date

UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF LAND MANAGEMENT

By: _____

Martha Hahn
Idaho State Director
Bureau of Land Management

Date

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE

By: _____

Jack A. Blackwell
Jack A. Blackwell
Regional Forester
U.S.D.A. Forest Service, Region 4

April 25, 2001

Date

Chuck Findley
Acting Regional Administrator
EPA Region 10

Date

UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF LAND MANAGEMENT

By: _____

Martha Hahn
Idaho State Director
Bureau of Land Management

Date

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE


By: _____

Jack A. Blackwell
Regional Forester
U.S.D.A. Forest Service, Region 4

Date

SHOSHONE-BANNOCK TRIBES

By: _____


Lionel Boyer
Chairman
Fort Hall Business Council

Date

SHOSHONE-BANNOCK TRIBES

By: _____

Lionel Boyer
Chairman
Fort Hall Business Council

Date

UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF INDIAN AFFAIRS

By: _____

Sharon Blackwell
Name: Sharon Blackwell
Title: Deputy Commissioner of Indian Affairs
Bureau of Indian Affairs

MAY 4 2001

Date

UNITED STATES DEPARTMENT OF INTERIOR
FISH AND WILDLIFE SERVICE

By: _____

Name: _____
Title: _____
Fish and Wildlife Service

Date

SHOSHONE-BANNOCK TRIBES

By: _____
Lionel Boyer
Chairman
Fort Hall Business Council

Date

**UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF INDIAN AFFAIRS**

By: _____
Name: _____
Title: _____
Bureau of Indian Affairs

Date

**UNITED STATES DEPARTMENT OF INTERIOR
FISH AND WILDLIFE SERVICE**

By: Anne Badgley
Name: Anne Badgley
Title: Regional Director
Fish and Wildlife Service

5/22/01
Date

J. R. SIMPLOT COMPANY

By:

Ronald N. Graves

Ronald N. Graves

Vice President and Secretary

May 14, 2001

Date

NU-WEST INDUSTRIES, INC.

By:

Jon P. Goode

Name JON W. GOODE

Title VICE PRESIDENT

MAY 25, 2001

Date

RHODIA, INC.

By:

John P. Donahue

Name: John P. Donahue

Title: Senior Vice President, Secretary
and General Counsel

May 11, 2001

Date

FMC CORPORATION

By:

Robert J. Fields

Robert J. Fields

Division Manager

MAY 11, 2001

Date

P4 PRODUCTION, L.L.C.

By:



Bruce Pallante

Plant Manager and Assistant Secretary

May 16, 2001

Date

**AREA WIDE INVESTIGATION SCOPE OF WORK
SOUTHEAST IDAHO PHOSPHATE MINING RESOURCE AREA
PREPARED BY IDAHO DEQ**

Introduction

The Area Wide Investigation is a limited interagency-driven investigation designed to assess ecological and human health impacts from past mining operations, and to support agency-lead remedial activities in the Southeast Idaho Phosphate Mining Resource Area (Resource Area; See Exhibit 1). This investigation is separate and distinct, in that official Interagency technical conclusions will be developed, from the Resource Area investigations conducted by the Selenium Subcommittee of the Idaho Mining Association (IMA) or the Interagency/Phosphate Industry Selenium Working Group; or from any future site-specific remedial investigations.

As set forth in the Memorandum of Understanding (MOU) between federal, state, and tribal governments, signed on or about July 13, 2000, the State of Idaho Department of Environmental Quality (DEQ) is the lead agency for the Area Wide Investigation. The DEQ, with the assistance of a DEQ-retained third-party contractor, is responsible for coordinating the Area Wide Investigation with the other MOU agencies' active participation (including requesting concurrence from each Support Agency on each decision point and on each document developed during the course of the area-wide investigation) in accordance with the terms of the MOU. The primary objectives of the Area Wide Investigation are to:

- 1) Establish area wide remedial action objectives (RAOs), remediation goals (RGs), and risk-based cleanup levels for selenium and other contaminants of concern that will be protective of human health and the environment,
- 2) Develop a monitoring plan that will assess the effectiveness of future remedial activities within the Resource Area,
- 3) Develop Best Available Technologies and Remediation Techniques for use, as appropriate, at sites in the Resource Area, and
- 4) Provide information to support future agency-approved site investigations and remedial actions, and other land use activities on selenium-impacted lands within the Resource Area.

The following individual tasks and subtasks are proposed to meet these objectives in a manner which is not inconsistent with the National Contingency Plan set forth at 40

CFR Part 300, where applicable, and to provide the necessary information for supporting area wide activities. Anticipated work products to be developed in each task are listed with a tentative schedule provided as Attachment 1. Some tasks will be conducted concurrently and are not restricted to the consecutive order in which they are listed. The actual dates of completion for final products will depend on the availability and sufficiency of existing and/or projected data required to scientifically complete the objectives. Each task will be subject to a detailed scope of work prior to implementation for review and concurrence by the supporting agencies.

Task 1 Assessment of Existing Data and Filling Data Gaps

Purpose: Determine the need for additional data and collect data as needed to accomplish the Area Wide Investigation objectives.

Subtasks

1. **Evaluate existing data** collected as part of the Montgomery Watson work and any other data that may be available from federal, state, tribal and private sector sources for use in the ecological and human health risk assessments and **identify data gaps**. Other ongoing investigations will be considered in determining critical data needs. A Conceptual Site Model (CSM) will be developed and used to help identify data gaps. All existing data will be used to the extent possible to prevent duplication of effort.

Work Products:

- Draft CSM
- Final CSM
- Draft Data Gap Technical Memorandum
- Final Data Gap Technical Memorandum

2. **Develop sampling and analysis plan** to fill the data gaps. The sampling plan will be designed to provide the DEQ with the data needed to complete the ecological and human health risk assessments in a time frame that will support future remedial actions. To ensure data consistency and provide for cost efficiencies, IMA's Contractor may be requested to perform portions of the sampling activities associated with filling the identified data gaps. The level of support will be at DEQ's discretion and will be requested of the IMA in a detailed work order format. The resulting work plans developed by IMA's Contractor will be subject to DEQ's approval and will be incorporated into enforceable agreements subject to the terms and conditions of the Area Wide CO/AOC. A DEQ-designated Quality Assurance Monitor may accompany the IMA's sampling team during any sampling events. In instances where a DEQ-designated Quality Assurance Monitor does not accompany the IMA's sampling team, the IMA's contractor may be requested to provide split samples to DEQ, at the Agency's

discretion. DEQ reserves the right to use their own employees or Contractors to implement any studies or sampling activities the agency feels warranted including QA/QC verifications.

Work Products: IMA Work Order Request
 Draft Sampling and Analysis Plan (SAP)
 Final SAP
 Data Summary Report (DSR)

Task 2 Completion of Ecological and Human Health Risk Assessments

Purpose: Complete risk assessments to identify contaminant sources, exposure pathways, receptors, and to provide data to support risk management decision-making. EPA risk protocols will be used by DEQ to guide its Resource Area risk characterization. Exposure scenarios will be identified to reflect the range of conditions and multi-use functions found in the Resource Area and to represent human health exposure scenarios.

Subtasks

1. Assess adequacy of previous risk characterization work by reviewing the methodology utilized by Montgomery Watson. The work will be reviewed for consistency with acceptable practice and appropriateness for Resource Area risk characterization to include consideration of traditional and cultural perspectives presented by the Shoshone-Bannock Tribes.

Work Product: Review and Recommendation Memorandum

2. Develop protocols to complete risk assessments utilizing, as appropriate, the work previously performed by Montgomery Watson and other data generating sources. The comments developed from the Review and Recommendation Memorandum, and appropriate references, will be used to develop Agency-accepted risk assessment protocols.

Work Products: Draft Protocol Technical Memorandum
 Final Protocol Technical Memorandum

3. Complete risk assessments according to approved protocols which may include deterministic or probabilistic methods where appropriate as determined by DEQ in its discretion and with the concurrence of the Federal Agencies and the Tribes as provided for in the MOU. In any circumstance where DEQ, the Federal Agencies and Tribes decline to utilize probabilistic methods, the Companies reserve the right to perform such analysis at their own expense and to offer said

analysis for consideration by the DEQ, Federal Agencies and Tribes. DEQ, the Federal Agencies and Tribes will include any such analysis submitted by the Companies in the administrative record regarding any decisions based upon risk assessments.

Work Products: Draft Human Health Risk Assessment
 Final Human Health Risk Assessment
 Draft Ecological Risk Assessment
 Final Ecological Risk Assessment

Task 3 Risk Management - Establish RAOs, RGs, and Risk-based Cleanup Levels for Exposure Media

Purpose: Develop Remedial Action Objectives (RAOs) and Remediation Goals (RGs) for the Phosphate Mine Resource Area. The RAOs will generally describe objectives on an area wide basis. The RGs will provide more specific statements of the desired endpoint concentrations or risk levels for each identified exposure route. The area wide RAOs, RGs and risk-based clean up levels (RBCULs) will provide discretionary guidance in assisting the site-specific lead agencies (together with site-specific data) in developing site-specific RAOs, RGs and RBCULs that meet both site-specific and area wide ecological and human health protection goals. Area Wide RAOs will consider loading contributions that may affect future Total Maximum Daily Load (TMDL) requirements to be developed for area drainage basins. ARARs identified in Task 7 will also be considered in developing RAOs, RGs and Clean Up Levels.

Subtasks

1. Develop, together with Agencies and Tribes, Area Wide RAOs and Preliminary RGs for each exposure pathway and media

Work Products: Draft RAO Memorandum
 Final RAO Memorandum

2. Develop, together with Agencies and Tribes, Area Wide RGs and Risk-based Cleanup Levels

Work Products: Draft RG and Cleanup Level Technical Memo
 Final RG and Cleanup Level Technical Memo

Task 4 - Development of water quality and aquatic monitoring plan

Purpose: Establish a surveillance monitoring plan to determine level of success of site-specific remediation projects within the Resource Area.

Subtasks

- 1) Determine appropriate long-term trend monitoring sites and frequency of monitoring to assess surface and groundwater quality, reclamation vegetation, and soils on an area wide basis, including methodologies and QA/QC protocols. The Area Wide Monitoring Plan will consider, and to the extent possible, integrate the Companies' site-specific monitoring requirements to minimize repetition and/or redundancy.
- 2) Determine appropriate long-term trend monitoring sites and frequency of monitoring to assess potential biological impacts including bioaccumulation in aquatic trophic levels (e.g. aquatic macroinvertebrates, fishes).
- 3) Prepare Comprehensive Monitoring Plan with a Quality Assurance Project Plan (QAPP) incorporating above elements and any additional items as warranted.

Work Products: Draft Comprehensive Monitoring Plan and QAPP
Final Comprehensive Monitoring Plan and QAPP

Task 5 - Development of Best Available Technology (BAT)/Remediation Techniques Manual for historic sites

Purpose: To develop a comprehensive list of available remediation techniques (and innovative technology currently in development) for inactive, past-use sites that have broad applicability and can be applied to other or similar sites in the Resource Area. This list will be used, together with remedial technologies identified during the site specific work (EE/CA's and SI's), to guide response actions.

Subtasks

- 1) Assemble a technical committee of experts from federal/state/tribal agencies, mining companies, and public/private sector to assist IDEQ in compiling a summary of known or existing technologies for inactive/abandoned sites.
- 2) Identify problems that require development of new BATs or remediation techniques, identify potential BATs to address those problems, and recommend potential pilot testing programs for BATs with a high probability of success in Area Wide applications. Implementation of the pilot testing program would not

be a part of the Area Wide Investigation (part of the recommendation would be how to implement the pilot project).

Work Products: Draft BATs/Remediation Techniques Guidance Manual
 Final BATs/Remediation Techniques Guidance Manual

Task 6 - Public Involvement/Participation Activities

Purpose: To ensure the participation and continued dissemination of information to interested members of the public including any special measures necessary to provide information and an opportunity to participate to tribal members. This process will be specific to the Agency-lead Area Wide Activities and may be supplemented by public involvement activities being conducted by the IMA and former Selenium Working Group participants. However, the IMA and former Selenium Working Group representatives will not, except as set forth specifically by agreement, communicate agency positions to the public. The following tasks will be performed in support of Public Involvement.

1. Develop a formal Community Relations Plan that details public information efforts, projected public comment periods, location of public information repositories, and summary of interested public and private individuals and organizations.
2. Develop and plan periodic Public Information Meetings summarizing the status and results of Area Wide activities.
3. Establish and maintain Administrative Record and public information repository.

Work Products: Draft Community Relations Plan
 Final Community Relations Plan
 Administrative Record

Task 7 – Other Activities to Support Future Operations and Remedial Actions in the Resource Area

Purpose: Develop information that is specifically needed to support future agency-approved remedial actions and other land use activities. Agencies and Mining Companies will be consulted as to additional activities that may need to occur under this task. The following tasks have been identified as critical information support items.

1. Identify ARARs (including other information "to be considered" (TBC)) for the Resource Area that pertain to RAOs, RGs and risk-based clean up levels. The federal agencies and tribal representatives will be asked for assistance in summarizing their respective ARARs. The ARARs will be used as appropriate to support future agency-approved remedial actions in the Resource Area.

Work Products:

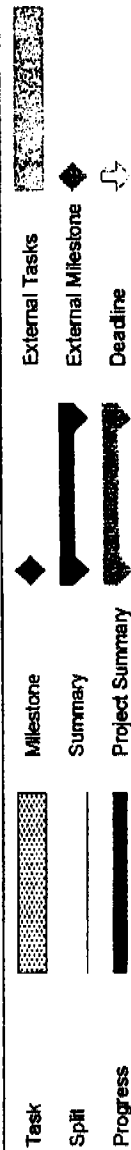
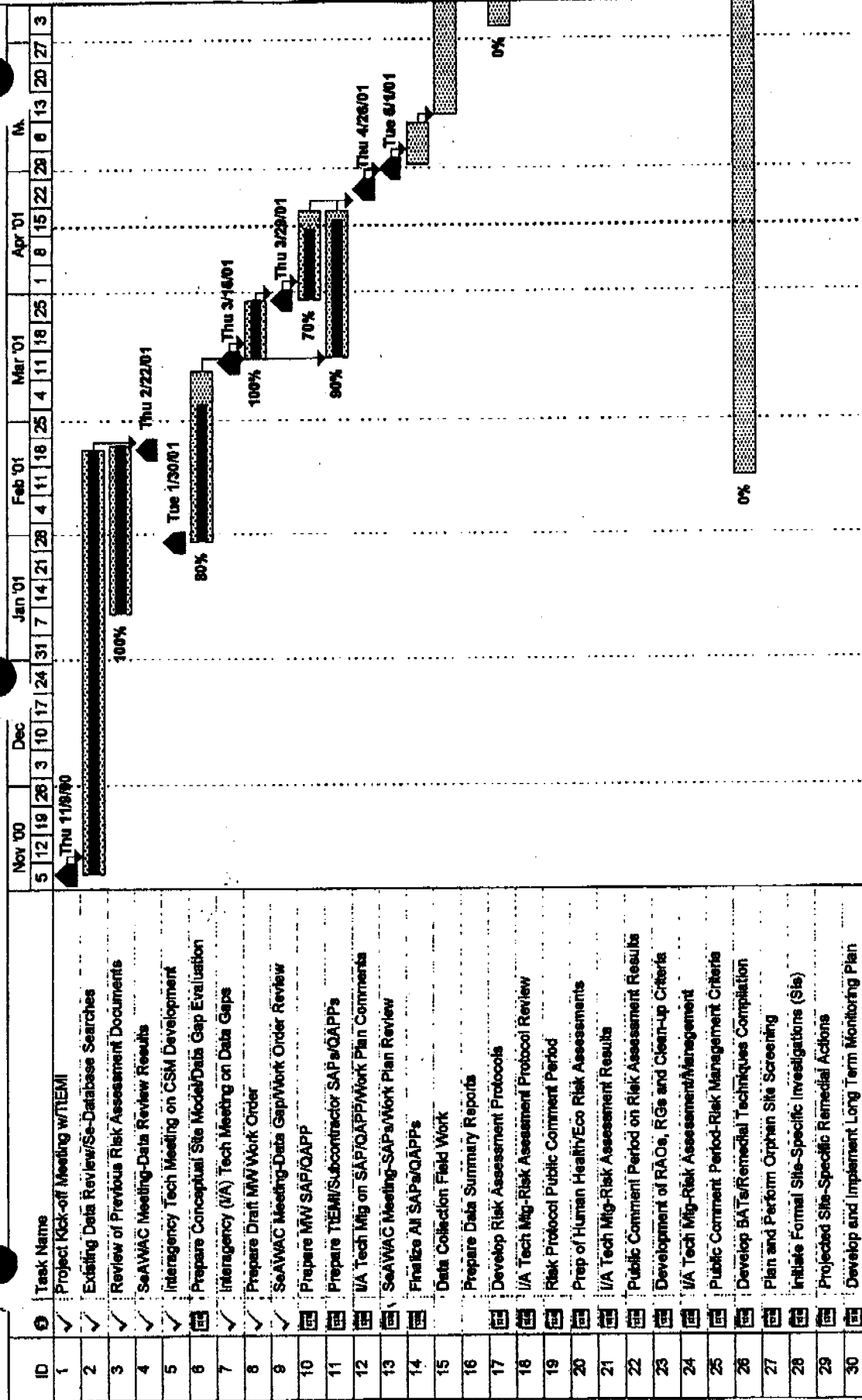
Draft ARAR Summary
Revised ARAR Summary

2. Assist federal, tribal and state land management agencies, as requested, in developing guidelines for livestock grazing on selenium-impacted lands. Policy statements pertaining to this issue will be authored by the appropriate implementing agencies.
3. Coordinate and draft official interagency responses, data interpretations and technical conclusions in support of Area Wide Investigation decision-making and policy development.
4. With site-specific lead agencies, participate in the development of generic site-specific scope of work templates that address area wide goals and may be used, as appropriate, on a site-specific basis to facilitate interagency consistency in investigative and remedy phases of future site-specific remedial activities. However, lead agencies may choose to proceed with site-specific activities prior to the finalization of any associated template.
5. Incorporate relevant site-specific data, as developed, into applicable Area Wide Investigation objectives.
6. Consistent with the MOU and with the parties' obligations under any order or agreement with the responsible mining companies, continue coordination with the IMA Se Committee members and the DEQ Se Area Wide Advisory Committee (SeAWAC, former Se Steering Committee) participants to encourage cooperative efforts, where practicable. Membership in the SeAWAC shall include at least one representative from each mining company and a representative from any state, local or national public interest groups, or state or local government, expressing a desire to participate. At a minimum, the DEQ will solicit comments from the SeAWAC participants on drafts of the *Site-specific Statement of Work Template*, *Data Gap Analysis Technical Memorandum*, *2001 Area Wide Sampling Plan*, and *Area Wide Monitoring Program*, *Risk Assessment Protocol Technical Memorandum*, *Risk Assessment Results* and *Area Wide Risk Management Guidance Document (including suggested RBCLs)*. To allow for potential schedule constraints, this committee review process may be conducted

through electronic correspondence with the approval of the participants. Additionally, the DEQ will conduct formal 30-day public comment periods for the *Risk Assessment Protocol Technical Memorandum, Risk Assessment Results* and *Area Wide Risk Management Guidance Document (including suggested RBCLs)*.

7. Interact with Shoshone-Bannock Tribes and Bureau of Indian Affairs to develop and consider a traditional and cultural perspective into the Area Wide Investigation risk assessment work.

ATTACHMENT 1: Tentative Schedule
for Area Wide Investigation Activities



Project: IDEQ Area Wide Investigation
Date: 1/24/01

**ATTACHMENT 1: Tentative Schedule
for Area Wide Investigation Activities**

ID	Task Name	Jun '01			Jul '01				Aug '01					Sep '01				Oct '01				Nov '01				Dec '01				Jan '02			
		10	17	24	1	8	15	22	29	5	12	19	26	2	9	16	23	30	7	14	21	28	4	11	18	25	2	9	16	23	30	6	
1	Project Kick-off Meeting w/TEM																																
2	Existing Data Review/Se-Database Searches																																
3	Review of Previous Risk Assessment Documents																																
4	SeAWAC Meeting-Data Review Results																																
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28	Initiate Formal Site-Specific Investigations (SIs)																																
29	Projected Site-Specific Remedial Actions																																
30	Develop and Implement Long Term Monitoring Plan																																

Project: IDEQ Area Wide Investigation
Date: 1/24/01

Interagency-Black
Companies-Red
Public-Green

Task

Split

Progress

Milestone

Summary

Project Summary

External Tasks

External Milestone

Deadline

**ATTACHMENT 1: Tentative Schedule
for Area Wide Investigation Activities**

ID	Task Name	Jan '02			Feb '02				Mar '02				Apr '02				May '02				Jun '02				Jul '02						
		13	20	27	3	10	17	24	3	10	17	24	31	7	14	21	28	5	12	19	26	2	9	16	23	30	7	14	21	28	4
1	Project Kick-off Meeting w/TEAM																														
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Project: IDEQ Area Wide Investigation
Date: 1/24/01

Interagency-Black
Companies-Red
Public-Green

Task



Milestone



External Tasks



Split



Summary



External Milestone



Progress



Project Summary



Deadline



**ATTACHMENT 1: Tentative Schedule
for Area Wide Investigation Activities**

ID	Task Name	Aug '02			Sep '02			Oct '02					Nov '02				Dec '02					Jan '03				Feb					
		11	18	25	1	8	15	22	29	6	13	20	27	3	10	17	24	1	8	15	22	29	5	12	19	26	2	9	16	23	2
1	Project Kick-off Meeting w/ITEM																														
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Project: IDEQ Area Wide Investigation
Date: 1/24/01

Interagency-Black
Companies-Red
Public-Green

Task

Split

Progress

Milestone

Summary

Project Summary

External Tasks

External Milestone

Deadline

**ATTACHMENT 1: Tentative Schedule
for Area Wide Investigation Activities**

ID	Task Name	Mar '03			Apr '03			May '03			Jun '03			Jul '03			Aug '03			S										
		9	16	23	30	6	13	20	27	4	11	18	25	1	8	15	22	29	6	13	20	27	3	10	17	24	31	7	14	21
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Project: IDEQ Area Wide Investigation
Date: 1/24/01

Interagency-Black
Companies-Red
Public-Green

Task



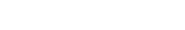
Milestone



External Tasks



Split



Summary



External Milestone



Progress



Project Summary



Deadline



Exhibit 1
Area Wide Investigation Scope of Work
Southwest Idaho Phosphate Mining Resource Area

Legend:

- Major Highways
- Cities
- Orphan Mines
- Orphan Mines
- Mine Leases
- Land Ownership
- BLM
- Fort Hall Reservation
- Caribou National Forest
- Private
- State

EXHIBIT B

